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THE AFTERMATH OF WACO: CHANGES IN FEDERAL LAW ENFORCEMENT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

EXAMINING CHANGES IN FEDERAL LAW ENFORCEMENT AS A RESULT
OF THE INCIDENT IN WACO, TEXAS

OCTOBER 31 AND NOVEMBER 1, 1995

Serial No. J-104-51

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United States. Congress.
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THE AFTERMATH OF WACO: CHANGES IN FEDERAL LAW ENFORCEMENT

TUESDAY, OCTOBER 31, 1995

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room SH-216, Hart Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee), presiding.

Also present: Senators Grassley, Specter, Kyl, DeWine, Abraham, Biden, Simon, Feinstein, and Feingold.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Over the years, I have been a very strong supporter of Federal law enforcement, both of its people and agencies, and I still am. However, in recent years and recent months, law enforcement at both the Federal and State levels has been the subject of much scrutiny and criticism. I sense the frustration of those men and women of high integrity who are true public servants employed to enforce our Nation's laws and who often endanger their own lives in the process.

Not surprisingly, there is a growing sentiment in law enforcement that they are being unfairly treated. Recent tragedies and other troubling news stories they feel are being used by the media and by some in Congress to undermine public confidence in those we have hired to protect the public. To those brave men and women, I say this Senator shares your concern. I want nothing but the best for you who serve with the FBI, ATF, DEA, and every other law enforcement agency. And that includes fair recognition for the sacrifices you make.

But I also want what is best for the public, and that is something that is part of these hearings. We want what is best for the public as a whole. It is for this reason that I am particularly saddened by the events that have transpired in the last 3 years. Such events, if not responded to, will permanently erode the public's confidence in Federal law enforcement in our country. This we cannot allow to happen.

This hearing is not an effort to place blame on any individual or on the administration. Indeed, we will be examining the systemic bureaucratic problems and policies at ATF and FBI that resulted in the tragedy at Waco. The mandate for this committee is to ensure that tragedies like the one at Waco—I am specifically referring to the deaths of the residents of Mt. Carmel Center, including

25 children, and to the 4 ATF agents who were killed in the line of duty—are never again associated with a law enforcement operation.

What I find most troubling is that the American people now perceive law enforcement as it is suggested in this picture over here, and I would just point to poster No. 1. Contrary to what one may think when first glancing at this photograph, this picture is not a soldier fighting for peace in the gulf war or in Somalia; rather, it is an FBI agent at Waco.

It is my absolute belief that this is not the image that the Framers of our Constitution had in mind when they carefully constructed that sacred document. It is certainly not how I perceive the FBI, nor is it the image held by the legions of American citizens who have worked with, and been helped by, the FBI over the years.

Ask the parent of a missing child. Ask a senior citizen in my own home State of Utah whose life savings were saved when the FBI shut down a fraudulent telemarketing racket that preyed on seniors. And you could go through countless other innumerable illustrations. But, sadly, the image in this poster is the image many people now have, and it is imperative that we address these concerns.

I hope that the Americans who serve in Federal law enforcement will see this hearing as an opportunity. My mother used to tell me that whenever I made a mistake, I should learn lessons from it, correct my actions or my thinking, and then move on. This hearing is an opportunity to find the lessons in this tragedy, make necessary corrections in our actions or our thinking, and then move on.

It is with these ideas in mind that this committee conducted its investigation into the events at Waco, and in this framework, I intend to conduct these hearings. We have met with, heard from, and examined information from numerous Federal agencies, private citizens, activist groups, and the media. In excess of 300,000 documents and 700 hours of videotape and audiotape have been analyzed, and dozens of interviews have been conducted in preparation for these hearings.

Let me be clear. This investigation has not uncovered any evidence of political corruption or influences. We have not found any of that. There was no conspiracy to kill Branch Davidians. What the investigation has uncovered is that there are several troubling patterns which have developed in Federal law enforcement. Over the next 2 days, we hope to discuss just what those patterns are, as well as review what Congress and the American people expect from their law enforcement agencies.

This country is based on the principles embodied in the Constitution. Fundamental to this document is the concept that Government must be kept within bounds. The fourth amendment—ironically, a charred copy of the very amendment, was found in the debris at Waco, and that is poster No. 2; there is the charred copy that was found right there at Waco—guarantees the right of the people to be secure in their persons, houses, papers, and effects.

In my opinion, the handling of this situation by Federal law enforcement was not in keeping with that principle. Americans have

come to expect that law enforcement's primary responsibility is the investigation of crime and protection of the public, not the frightening of people via paramilitary units.

Having had the benefit of the Ruby Ridge hearings, the House of Representatives hearings on Waco, and the enormous documentation regarding these matters, I believe that it is in the best interest of this committee, the U.S. Senate, and, most importantly, the American public to air these concerns.

Further, we must establish a level of oversight over the management of law enforcement agencies that will ensure that debacles like Ruby Ridge and Waco will never happen again. To that end, I would like to briefly outline what will be addressed at these hearings.

The first day of this 2-day hearing will focus on the collecting and processing of intelligence information by the Bureau of Alcohol, Tobacco, and Firearms [ATF]. ATF's failure to adequately collect and analyze the relevant and available information on David Koresh and his followers directly resulted in a plan that did not properly assess the mindset of the Davidians. ATF only considered information that supported the tactical approach it had preselected. No contingencies were ever developed. It defies logic that any law enforcement agency would attempt to accomplish such an operation without a contingency plan, especially a plan that puts more than 100 agents in harm's way. This fatal flaw paved the way for the tragic deaths of four brave, young, dedicated law enforcement officers.

The second day, the committee will carefully examine the relationship between the FBI negotiators and the FBI Hostage Rescue Team, or the HRT. At the heart of this debate is the degree to which the employment of an HRT is appropriate in U.S. law enforcement operations. I believe it is appropriate in many instances, but not so in others. These people are people who risk their lives for us, but they should be used very sparingly. This issue is particularly relevant in barricade situations.

In the case of Waco, there appears to have been tension between those who felt that a military-style response was appropriate and those who believed that the negotiation process would be more effective. Although I am a proponent of using the HRT in appropriate situations, the question whether Waco and Ruby Ridge were two of those circumstances does arise.

Unfortunately, there are numerous situations where HRT has been successfully employed that have not made the newspapers. I am aware that many of these successes, both domestically and overseas, are situations that could not have been resolved without the use of the Hostage Rescue Team. However, I firmly believe that paramilitary units such as HRT must be employed against U.S. citizens as a last resort, not as the first.

One of the major problems at Waco appears to have been the infusion of HRT tactics into the negotiations process. Such an infusion served to work at cross purposes with what was a successful negotiation strategy. Negotiations had successfully resulted in the release of a number of men, women, and, most importantly, children. Although we will never know whether a strict negotiation strategy would have been completely successful if it had been al-

lowed to play out, it is clear that the mechanism for continuing negotiations was available to the FBI. As there was no escalation in the level of threat or violence by the Davidians, the use of military-style tactics by HRT was arguably not appropriate or necessary.

In conclusion, I look forward to hearing from the administration as to how they intend to ensure that tragedies like Ruby Ridge and Waco are never repeated. So I stand ready to work constructively with them toward this goal, and I believe this committee as a whole does as well.

We will now turn to our Republican—or excuse me, our Democrat leader on the committee, Senator Biden.

Senator BIDEN. It is happening all too often, Mr. Chairman. [Laughter.]

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, thank you and good morning.

The stated goal of these 2 days of hearings on the siege at Waco is, in my view, a good one: To discuss with two Federal law enforcement agencies involved in the siege a number of important changes in policies and practices they have implemented in order to improve their operations and to reduce the possibility that another tragedy like Waco could occur in the future.

Both agencies have candidly admitted that serious mistakes occurred at Waco and that improvements needed to be made. This hearing provides a forum to evaluate these new policies and procedures and to ensure that the changes made are the right ones and that implementation is complete and effective.

But, I believe, it is important that these hearings serve a second goal as well, and that is, to put the incident at Waco, with all the mistakes that were made, into its proper context.

Let me make this point absolutely clear: There is no place in our country for racist cops like Mark Fuhrman. There is no place in our country for abusive cops. There is no place in our country for law enforcement bent on the use of unjustified force.

But there is a big difference between mistakes and malevolence. The record of the Waco incident documents mistakes—mistakes in gathering intelligence and mistakes in planning and executing operational plans. And law enforcement should and must be held accountable for such mistakes.

What the record from Waco does not evidence, however, is any improper motive or intent on the part of law enforcement.

I believe this is a very important point to make to the American public because there are a growing number of people across the country who are seizing on the incidents at Waco as well as at Ruby Ridge to suggest that law enforcement is our enemy.

This suggestion is powerful because every Federal law enforcement officer is entrusted with one of the most important powers the public bestows upon its Government: The authority to investigate and prosecute violations of our laws, particularly the criminal laws of the United States.

But this suggestion stands in conflict not only with the record from Waco, but with the excellent overall record of the Federal law enforcement agencies, including both the ATF and the FBI. It

stands in conflict with the vast majority of Federal law enforcement officers who deserve our trust. They are hardworking, dedicated professionals who protect the public every day, and as we saw in Waco and in many other instances, by giving their lives, not just putting them on the line.

So as we examine the mistakes made by ATF and the FBI, I think it is very important we, as elected members of this Government, keep certain key facts in mind.

First, that the ATF had a legitimate and very important reason to be at Waco in the first place, that is, to serve warrants on those reasonably suspected of violating the Federal criminal laws.

Second, that the FBI had a legitimate and very important reason to get David Koresh and the Davidians out of their fortified compound and brought to justice. The Davidians had responded to the agents' attempting to serve lawful warrants by killing 4 and wounding 21.

Third, that in the end, David Koresh and the Davidians set fire to themselves and committed suicide. The Government did not do that.

And, finally, we must keep in mind one other fact, and that is, the changing nature of criminal activity and the very difficult problem this creates for American law enforcement.

The days of the FBI agent with his trusty revolver are over. Today's criminals are armed with automatic and semiautomatic weapons, including high-caliber, armor-piercing ammunition.

Consider, for example, that the ATF and FBI agents at Waco were facing a group that was heavily armed—in addition to numerous fully automatic and semiautomatic assault rifles, grenades, rocket projectiles, and hundreds of thousands of rounds of ammunition; the Davidians possessed two antitank, armor-piercing, long-range assault weapons as well. Not your usual walk in the park.

I would like to show you this. This is an example of the .50 caliber ammunition used in the two guns I just referred to. This is a serious piece of weaponry. For comparison's sake, let me show you the ammunition from the standard issue, 9 millimeter handgun, carried by law enforcement. Times have changed. Bonnie and Clyde didn't walk around with this .50 caliber ammunition. This is a different world in which these poor folks find themselves as they go out to enforce our laws.

In short, law enforcement today faces criminals armed with military-style weapons. Law enforcement today faces terrorist bombings like we have never seen in our history as a nation, like that which occurred in Oklahoma, and also other deadly acts of sabotage.

The safety of the public, as well as law enforcement officers themselves, requires capabilities unthought of even 10 years ago. Now, of course, these capabilities carry with them responsibilities that did not exist to the same degree before. We have to ensure that our Federal law enforcement receives the best training and the best leadership possible.

This, in my view, is the context in which we must consider the actions ATF and the FBI have taken at and since Waco.

Some of the specific questions I will pose to the panel of witnesses today include: What is the process by which ATF and FBI

now formulate operational plans for difficult situations like Waco? How do we ensure that teams planning operations receive the best intelligence possible and the best information from relevant experts? And when is it appropriate for the hostage rescue teams to be dispatched? Are there written guidelines governing the use of these teams? Also, how is the inherent tension between negotiations and action, between the carrot and the stick, to be handled in these types of situations? How do we best equip onsite commanders in hostage or resistance-type situations to strike the elusive balance between negotiations and increased pressure needed to reach resolution?

There is no question that Waco was a terrible tragedy and that in many respects Federal law enforcement handled a difficult situation badly. Both ATF and the FBI have made numerous, significant changes—structural and operational—in an effort to use the lessons of Waco to avoid future tragedies. These are what we should be looking at as well.

These hearings will serve an important goal if they convey to the American public how seriously their Government takes the responsibilities of law enforcement, and that, responding to the shortcomings seen at Waco, we made priority efforts to see to it that the Federal law enforcement agencies involved, in fact, made changes.

I look forward to discussing these and other issues with the witnesses who will testify today and tomorrow, and I join Senator Hatch in welcoming all of you here today.

Thank you, Mr. Chairman, for these hearings.

The CHAIRMAN. Well, thank you, Senator Biden.

At this time I would like to enter the statements of Senators Simpson and Kohl for the record.

[The prepared statements of Senators Simpson and Kohl follow:]

PREPARED STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Thank you, Mr. Chairman. I would like to take a few seconds of my time to thank all the witnesses that have come to the Hill to testify over these long 2 days. As we all know the incidents that occurred at Waco have stirred a great interest in the American people. We all recall during the time of the incident not being able to turn on the television without seeing it on the news.

Since one of the significant reasons for the Waco raid was alleged weapons violations, many of the citizens of my State of Wyoming were more profoundly troubled by Waco than many Americans who have never owned, let alone never even seen, a firearm. Unlike this Capital City where gun-related violence is so very high even though it is illegal to own a firearm, the great majority of the citizens of my State have chosen to exercise, in varying degrees, their second amendment rights. Some have only guns for hunting or defense of life, home, or property, while many others have guns and equipment devoted to the assembly and maintenance of firearms and ammunition. Some of these same people are even beginning to hide firearms because they feel it is only a matter of time before their Government—staffed with individuals who are increasingly hostile toward gunowners—will begin action to systematically confiscate all firearms from law abiding citizens.

I have even had people accuse me of supporting this dreaded agenda even though I grew up using firearms—indeed, having been on Federal probation as an over-eager young man for shooting up mailboxes. So when I say that my constituents are very concerned with recent actions of these Government agencies, I believe I have ample evidence to stand on.

The thing that disturbs me the most about this is that the agencies involved in the Waco incident seem to have spent great energy to brush off the blame in this incident. Many are asking, Would these fires have ever started if our Government had not adopted a reckless siege mentality that lasted for months? One thing is for certain this mistake resulted in the death of dozens of people at the hands of this

Government. It does not matter that it was an agency of this Government to the average citizen. To him or her it wasn't the ATF or FBI who killed those people, but the whole Government. None of us like being associated with a government accused of committing such acts. The outcome of this event does tell us one thing—the very government oppression that our forefathers came to this country to escape would seem to be evident here—except now there is no New World to which to escape. This means that our Government is going to have to examine itself clearly and assure this does not happen again. Hopefully, these hearings will set us on track to assure just that.

With those thoughts I do have a few questions that I would like to ask each of our witnesses.

Question for FBI. We have all heard the complaints in this age of government downsizing that we have too many agencies doing the exact same thing. As you well know, we have a number of overlapping Federal law enforcement agencies, all of which are further complimented by law enforcement at the State and local level—so there does appear to be a level of duplication present.

The questions I would like you to answer are as follows:

(1) Is there a need for the Bureau of Alcohol, Tobacco, and Firearms that could not be fulfilled by another Government law enforcement agency?

(2) (A) Couldn't ATF responsibilities be folded into the FBI?

(B) What would be the potential problems with taking such action?

(C) What would be the benefits?

Question for Ken Lanning. I would like to examine the standards and guidelines by which you judge cults. In other words, Sir; What in your mind differentiates an extreme—but nonetheless legal—religious organization from a cult that is judged to be so dangerous that it needs to be laid siege to?

In your view, which category did the Branch Davidians fall into? Why?

PREPARED STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Mr. Chairman, I want to commend you for having these hearings today, and for demonstrating that the committee takes seriously its responsibility to oversee Federal law enforcement.

For the last 2 months, our subcommittee has been pursuing this same goal with respect to Ruby Ridge. We held 14 days of hearings, and heard testimony from more than 50 witnesses. Given our experience, let me briefly reflect on the differences between Ruby Ridge and Waco.

Some have said that these tragedies are evidence of a cowboy mentality among law enforcement. Certainly, law enforcement was overzealous at times—they made mistakes and errors that we must take very seriously. But while the loss of life was greater at Waco, the actions of law enforcement at Ruby Ridge should trouble us more. Let me tell you why.

First, the threat faced by law enforcement at Waco was dramatically larger, more complex and more deadly than that at Ruby Ridge. The Waco compound contained dozens of adults, armed with hundreds of weapons, including high-powered rifles, machineguns, handgrenades, and over 400,000 rounds of ammunition. The Branch Davidians had also developed long-term stores of food and water in order to wait out a siege for hundreds of days. Finally, the heavily armed Branch Davidians had already killed 4 agents, wounded over 20 more, and were willing to die in a fire of their own making. It is hard to imagine a more problematic situation for law enforcement.

In contrast, though Randy Weaver and his family were armed, they were also alone in a single cabin. That left law enforcement with more nonlethal options.

Other critical differences concern the acts of law enforcement—both before, during, and after the siege at Waco.

Before the siege, an ATF investigation uncovered significant, detailed evidence regarding numerous firearms and explosives violations. This investigation—through eyewitness accounts and shipment records—revealed that the Branch Davidians had amassed a virtual arsenal. In contrast, the 2 year ATF investigation of Randy Weaver resulted in very little: A dubious indictment for selling just two sawed-off shotguns.

During the siege, the rules of engagement that the FBI used were the standard rules—permitting the use of deadly force only if an agent or another person was in imminent danger of death or serious bodily injury. This contrasts sharply with the rules at Ruby Ridge, which gave snipers a virtual green light to shoot. Moreover, at Waco, the FBI never fired a shot—despite being fired upon.

In addition, the FBI undertook a fundamentally different negotiations strategy at Waco. There is no question that there were problems with that strategy; we will be hearing about those problems tomorrow. But the FBI waited 51 days, spent more than 200 hours on the phone with 54 different Branch Davidians, and secured the release of 35 individuals prior to the fire. In contrast, the Bureau shot first at Ruby Ridge, then negotiated later—and only sporadically at best.

Finally, we must remember that after Waco, law enforcement did demonstrate some capacity for critical self-analysis. Several officials were either sanctioned or forced to retire, and improvement in law enforcement were implemented—long before congressional hearings began.

We will be hearing about many of these changes later today and tomorrow, and I look forward to this testimony.

The CHAIRMAN. We will begin our hearings by introducing our first panel. The purpose of this panel is to set forth in a general manner how a law enforcement agency should conduct information and intelligence gathering in order to formulate a successful operational plan.

To help us get a clearer understanding as to what should be done, we have Dr. James Fyfe, who is a professor of criminal justice and a senior policy research fellow at Temple University in Philadelphia. Dr. Fyfe is a 20-year veteran of the New York Police Department and since his retirement in 1979, has actively worked in the academic world of criminal justice. He has testified many times as a police-practices expert before Congress and in both State and Federal courts. Dr. Fyfe will begin by providing a brief overview of the type of information and intelligence gathering that is necessary in large-scale law enforcement operations.

We will also hear from Dr. Nancy Ammerman, who is currently a professor of sociology of religion at the Center for Social and Religious Research at the Hartford Seminary in Connecticut. Dr. Ammerman received her Ph.D. from Yale and has published numerous pieces on various religious liberty issues. Moreover, she served on the experts panel which provided recommendations to the Departments of Justice and Treasury with respect to the incident at Waco. Dr. Ammerman will discuss types of information sources which were available to law enforcement to help formulate a successful plan. At the heart of Dr. Ammerman's testimony is the notion that the more law enforcement knows about its targets, the better.

So we welcome both of you to the committee. We look forward to your testimony, and we would like you to summarize as much as you can. We will put your complete statements in the records as though fully delivered.

So we will turn to you, Dr. Fyfe—

Senator BIDEN. Mr. Chairman, before you begin, may I ask a question?

The CHAIRMAN. Yes.

Senator BIDEN. We have three panels today, one of which, the third panel, is a panel that I asked to be assembled, and I may not be able to be here this afternoon. I would like to ask you to consider moving panel three to panel two and alternating like we usually do with panels, the majority and minority. I don't recall ever not doing that, Mr. Chairman.

The CHAIRMAN. We have tried to have this flow in a certain way. Let's try and get to it and see what happens. If we can't, let's consider that at that time. But we would like it to flow in this way

so that we first talk to the people who raised these issues, then talk to those who were there, and then go on from there so that we can ultimately resolve what really has to be done. But we will certainly look at that. Let's see if we can move through this morning. If we can get this all done this morning—

Senator BIDEN. Well, I am going to ask formally that panel 3 be moved after this panel, Mr. Chairman. After we have finished this panel, I would like you to do that. Like I said, I don't ever recall us not alternating between a majority and minority panel. I don't ever recall that, but I hope—

The CHAIRMAN. Let's proceed, and I will certainly look at it and see what we can do.

Dr. Fyfe, we will turn to you first.

PANEL CONSISTING OF JAMES J. FYFE, PROFESSOR OF CRIMINAL JUSTICE AND SENIOR PUBLIC POLICY RESEARCH FELLOW, TEMPLE UNIVERSITY, PHILADELPHIA, PA; AND NANCY T. AMMERMAN, PROFESSOR OF SOCIOLOGY OF RELIGION, CENTER FOR SOCIAL AND RELIGIOUS RESEARCH, HARTFORD SEMINAR, HARTFORD, CT

STATEMENT OF JAMES J. FYFE

Mr. FYFE. Good morning, Senator. It is an honor and a privilege to be with you to discuss the implications for law enforcement of the Waco disaster.

Before I do that, I should point out that I agree with Senator Biden. I don't believe that Waco involved any venality on the part of law enforcement officials. I think there were some very serious mistakes made.

I also believe that what happened at Waco cannot be considered in a vacuum or to have meaning only at the Federal level. Waco is one of the latest in a long series of law enforcement related debacles. During my career as a practitioner and student of law enforcement, these have included many of the 1960's urban riots; Attica; the SLA shootout; the MOVE bombing; the Rodney King beating and the police response to the riot that followed; the O.J. Simpson trial; the corruption scandals that regularly seem to haunt some police agencies; and, of course, Ruby Ridge.

These incidents illustrate the heart of this committee's deliberations: The need for further development and dissemination of standards to guide law enforcement field operations and, where such standards are in place, the need for mechanisms to ensure compliance with them.

Waco did not happen because there were no standards to guide authorities on the day of the ATF raid or on the day of the fire. Waco happened because well-known and well-established arrest, hostage, and barricade protocols were ignored. I know that you indicated that I would talk about the kinds of intelligence that needed to be gathered, and basically they are not very sophisticated. They are very much the same as what the military and the fire service and heart surgeons know, that before you commit yourself to a life-threatening situation, you should find out as much as possible about what you are getting into.

In the same way that mistakes were made at Waco, unnecessary blood was shed at Ruby Ridge not because there were in place no standards for such an encounter. Instead, somebody tore up existing well-reasoned standards on the way to that place and substituted his own. Nobody should be fooled into believing that the new deadly force policy issued a couple of weeks ago is actually a new policy or that it will serve as a model for local police to emulate or that it will prevent future Ruby Ridges. This new policy is a restatement of the FBI's long-term rules for deadly force and mirrors in every substantive way the constitutional requirements laid out by the U.S. Supreme Court a decade ago in *Tennessee v. Garner*. Indeed, as any informed local police official knows, any policy less restrictive than this new one would be unconstitutional. At Ruby Ridge, as at Waco, the problem was not the absence of rules; the problem was that the rules were ignored.

My background and orientation are in local policing, and there is much that can be learned from the experiences of local police. Local police know that they must answer to investigation by another totally independent level of Government—the U.S. Justice Department's Federal Bureau of Investigation and Civil Rights Division—and, increasingly, to independent and representative civilian review and advisory boards. There is no FBI to investigate the FBI. There is no Justice Department to investigate the Justice Department. There should be. There is no independent, nonpartisan, citizen review of incidents like Ruby Ridge and Waco. There should be.

Federal legislators should seriously investigate the feasibility of creating an independent body to oversee and review the actions of Federal law enforcement. In addition, the Senate and House should begin, with the executive branch a serious discussion of how a citizens' advisory and review panel, perhaps along the lines of the U.S. Civil Rights Commission, could be created.

Because of my orientation to local policing, I would like to spend a minute on it. At the State or local level, when police encounters go bad, it is usually not because the rules are ignored. It is usually because poorly supervised and trained officers simply did not know what to do.

This is a problem that causes bloodshed and riots, and I urge this committee to examine it most carefully during these deliberations. The development and dissemination of performance standards in law enforcement has focused at the management level and has been much less influential at the line level. In the late 1970's, the Justice Department funded an effort by the four major law enforcement professional groups to develop standards for the administration of law enforcement agencies. These groups did so and laid the groundwork for the Commission on Accreditation for Law Enforcement Agencies, of which I am commissioner. To date, CALEA has accredited nearly 400 State and local law enforcement agencies. CALEA standards also serve as the blueprint for administering many thousands more.

I am proud to serve as a CALEA commissioner, but I am frustrated that our standards affect primarily the management of law enforcement services rather than the direct delivery of law enforcement services. This is unfortunate and not much different from

professionalizing hospital administration but not surgery, or professionalizing court management but not trial practice.

Many arguments against development and dissemination of standards for the direct delivery of law enforcement services have been offered. Since no two law enforcement situations are exactly alike, some claim, it is neither realistic nor desirable to attempt to develop guidelines for the exercise of discretion in emergencies or to attempt to hold personnel accountable for abiding by them. All other life-or-death occupations face infinitely varying emergencies, but with rare exception, they hold their members to clear but flexible standards. Imagine being treated in an emergency room by a cardiologist who improvised in every case because he felt that no two heart attacks were exactly alike, or allowing generals to tear up rules of engagement en route to the front because no two battles are exactly alike.

The single best thing that this committee could do for the cause of effective law enforcement would be to help define effective law enforcement and to assure that all U.S. law enforcement officers were trained to do it and were held accountable for doing it.

By now, we all know what it takes to be a good police manager, and in the law enforcement community, we have made folk heroes of the best police managers. Unfortunately, we have yet to define the good cop in a way that can be agreed upon, articulated, and systematically turned into training that will clone other good cops. It has been a generation since the last Federal studies of law enforcement in the United States. Both of these efforts—President Johnson's Commission on Law Enforcement and the Administration of Justice, and President Nixon's National Advisory Commission on Criminal Justice Standards and Goals—have had enormous and positive effects on police management. We now need an investigation of the state of street-level policing in Federal law enforcement and a commitment to professionalizing and developing standards for it, to developing good cops and good agents, and to assuring that nobody else polices our streets.

Thank you.

[The prepared statement of Mr. Fyfe follows:]

PREPARED STATEMENT OF JAMES J. FYFE

Good morning. It is an honor and a privilege to be with you to discuss the implications for law enforcement of the Waco disaster.

Before proceeding to the substance of my statement, I must tell you that I have been retained as a consultant on law enforcement practices by lawyers representing survivors of the Waco dead. After the tragedy of Oklahoma City, I gave up any part in the Waco litigation because I did not wish to be associated with any cause that generated such pure evil. The Waco trials will proceed without me, and I am sure that justice will be done.

What happened at Waco cannot be considered in a vacuum, or to have meaning only at the federal level. Instead, Waco is one of the latest in a long series of law enforcement-related debacles. During my career as a practitioner and student of law enforcement, these have included many of the 1960s urban riots; Attica; the SLA Shootout; the MOVE bombing; the Rodney King beating and the riot that followed; the rarely discussed, but very real, disappearance of nearly 3,000 guns from the custody of this city's police department; the circus that was the Simpson trial; the corruption scandals that regularly seem to haunt some police agencies; and, of course, Ruby Ridge.

All of these incidents illustrate the issues that lies at the heart of this Committee's deliberations: the need for further development and dissemination of standards

to guide law enforcement field operations and, where, such standards are in place, the need for mechanisms to insure compliance with them.

Waco did not happen because there were no standards to guide the authorities on that day. My friend and former New York City police colleague, Frank Bolz, was a leader in developing the standards for hostage and barricade situations. He will appear here tomorrow, but may be too self-effacing to tell you how he put these standards into operation on hundreds of occasions, and that he resolved them all without bloodshed. Frank was successful because he had a good idea of what worked, and stuck to it. Waco happened because the hostage and barricade protocols Frank had pioneered and which the FBI had trained thousands of officials to use were ignored.

In the same way, unnecessary blood was shed at Ruby Ridge not because there were in place no standards for such an encounter. Instead, somebody tore up existing well-reasoned standards on the way to that place, and substituted his own. Nobody should be fooled into believing that the new deadly force policy issued a couple of weeks ago is actually a new policy, or that it will serve as a model for local police to emulate, or that it will prevent future Ruby Ridges. This "new policy" is a restatement of the FBI's long-term rules for deadly force, and mirrors in every substantive way the Constitutional requirements laid out by the United States Supreme Court a decade ago in *Tennessee v. Garner* (471 U.S. 1 (1985)) and the litigation that preceded it en route to the Supreme Court. Indeed, as any informed local police official knows, any policy less restrictive than this new one would be unconstitutional. At Ruby Ridge, as at Waco, the problem was not the absence of rules: the problem was that the rules were ignored.

My background and orientation are in local policing. With rare exceptions in places where government and the press do not do their jobs, local police know that they are closely accountable to close scrutiny by their mayors and city or county counsels, as well as the media, and that they ignore the rules at great risk. In the same way, the FBI and other federal agencies are accountable to the President, the Senate and House of Representatives, and the media.

But local police also must answer to investigation by another, totally independent, level of government—the U.S. Justice Department's Federal Bureau of Investigation and Civil Rights Division—and, increasingly, to independent and representative civilian review and advisory boards. Here, the analogy fails. There is no FBI to investigate the FBI. There should be. There is no independent, non-partisan, citizen review of incidents like Ruby Ridge and Waco. There should be.

Federal legislators should seriously investigate the feasibility of creating an independent body to oversee federal law enforcement. In addition, the Senate and House should begin with the Executive Branch a serious discussion of how a citizens' advisory and review panel, perhaps along the lines of the U.S. Civil Rights Commission, could be created.

In short, what I know about Waco and Ruby Ridge leads me to believe that the federal authorities knew what to do, and failed to do it. This is often not the case at the state or local level. There, when police-citizen encounters go bad, it is usually because poorly supervised and trained officers simply did not know what to do.

This is a problem that causes bloodshed and riots, and I urge this Committee to examine it most carefully. The development and dissemination of performance standards in law enforcement has focused at the management level and has been much less influential at the line level. In the late 1970s, the United States Department of Justice funded an effort by the four major law enforcement professional groups (the International Association of Chiefs of Police; the National Organization of Black Law Enforcement Executives; the National Sheriffs Association; and the Police Executive Research Forum) to develop standards for the administration of law enforcement agencies. These groups did so, and laid the groundwork for the Commission on Accreditation for Law Enforcement Agencies, Inc., (CALEA). To date, CALEA has accredited nearly 400 state and local law enforcement agencies. CALEA standards also serve as the blueprint for administering many thousands more.

I am proud to serve as a CALEA commissioner, but I am frustrated that our standards affect primarily the management of law enforcement services, rather than the direct delivery of law enforcement services. CALEA's management focus is understandable: the groups that have promulgated standards for law enforcement are its managers. They are considered professional, while those on law enforcement's frontlines typically are not and, at the state and local level, are represented by labor unions rather than anything akin to true professional organizations. This is unfortunate, and not much different from professionalizing hospital administration, but not surgery; or professionalizing the court management, but not the trial skills of prosecutors and defense attorneys.

Many arguments against development and dissemination of standards for the direct delivery of law enforcement services have been offered. Since no two law enforcement situations are exactly alike, some claim, it is neither realistic nor desirable to attempt to develop guidelines for the exercise of discretion in emergencies or to attempt to hold personnel accountable for abiding by them. This argument fails. All other life-or-death occupations face infinitely varying emergencies but, with rare exception, they hold their members to clear, but flexible, standards. Imagine being treated in an emergency room by a cardiologist who improvised in every case because no two heart attacks are exactly alike; or allowing generals to tear up rules of engagement en route to the front because no two battles are exactly alike. We would not tolerate this, and we should not tolerate it when law enforcement officials tell us that disasters were the unintended results of split-second, good faith decisions made in the heat of the moment by people who had been taught not to follow some time-tested principles, but to improvise at every emergency.

In the absence of such clearly defined standards and related training, we find state and local police officers who are left to improvise when motorists race away from them; when radio dispatchers tell them that robberies are in progress in local stores; when they encounter emotionally disturbed persons on downtown streets; or when distraught husbands take their wives and children hostage. Too many U.S. police departments—especially those in our most challenged urban areas—have found that diminished resources have left them unable to provide officers with training and guidance for such situations. Worse, we learn of these failures only when they cause officers to make bad situations worse by, for example, shooting their way out of confrontations with emotionally disturbed people after they have unnecessarily forced the confrontations in the first place.

The single best thing that this Committee could do for the cause of effective law enforcement would be to help to define it, and to assure that all U.S. law enforcement officers were trained to do it. By now, we know what it takes to be a good police manager and, in the law enforcement community, we have made folk heroes of the best police managers. Unfortunately, we have yet to define the good cop in a way that can be agreed upon, articulated, and systematically turned into training that will clone other good cops. It has been a generation since the last federal studies of law enforcement in the United States. Both of those efforts (President Johnson's 1967 Commission on Law Enforcement and Administration of Justice; the National Advisory Commission on Criminal Justice Standards and Goals, which had been impeded by President Nixon and which reported on its work in 1976) have had enormous and positive effects on police management. We now need an investment of the state of street-level policing and a commitment to professionalizing it, to developing good cops, and to assuring that nobody else polices our streets.

James J. Fyfe is a professor of criminal justice and senior public policy research fellow at Temple University, and a former lieutenant in the New York City Police Department, where he served for 16 years. A Commissioner of the Commission on Accreditation for Law Enforcement Agencies, he has recently co-authored "Above the Law: Police and the Excessive Use of Force" (Free Press, 1993) and a new version of O.W. Wilson's "Police Administration" (McGraw-Hill, forthcoming).

The CHAIRMAN. Well, thank you, Dr. Fyfe.
Dr. Ammerman, we will turn to you.

STATEMENT OF NANCY T. AMMERMAN

Ms. AMMERMAN. I want to commend you on having these hearings in the kind of atmosphere that I have so far seen this morning. I am here as a sociologist who studies conservative religious movements and got drawn into the Waco affair at being asked to serve on the panel of experts for the Justice and Treasury Departments. But I am also here as a citizen concerned about law enforcement in our rather complex democracy.

I am convinced that at the heart of the disaster in Waco was the decision first by the BATF and then by FBI tactical units to treat this as primarily a military-style operation. Once that decision was made, everyone's energy went into assessing firepower and angles of attack, and leaving the human dimension of the situation too easily forgotten.

It is my contention that it is essential in any action that involves a dissident religious or political group, that law enforcement remember that these are, first of all, human actors who do not in the main define themselves primarily in military terms, and neither should we. We should be making every effort to understand the logic of their religious beliefs and proceed with full respect for their citizenship rights, even if they seem utterly outlandish to us and even if they may have broken the law.

I have argued, in the materials that you have before you, that keeping the human dimension central in law enforcement requires that behavioral science advice be more widely available and that it carry more strategic clout. I have made several specific suggestions about how that might be possible that I will be glad to discuss with you further, but for now let me simply make a few remarks about why this is important by offering three rather obvious examples of how behavioral science advice might have changed what happened at Waco.

First, behavioral scientists would probably have advised the BATF that their estimation of the danger posed by the Davidians, in spite of all the armaments that they had, was probably overblown. That overestimate occurred, it seems to me, because the BATF's primary source of information was a deprogrammed ex-member. Social scientists, after studying dozens of people who had left high-intensity religious groups, have noted that those who have been deprogrammed are especially likely to be bitter and to exaggerate the evils of the group. Behavioral science advice, then, might have made it possible for BATF to imagine other ways to approach this case.

Second, and every so obviously, sociologists and social psychologists certainly would have advised that any group under siege is likely to turn inward, to bond to each other not to break apart, to follow their leader ever more strongly rather than to find him discredited. Outside pressure only consolidates the group's view that outsiders are the enemy—in this case, something exacerbated by the religious beliefs of this group. And isolation, cutting off communication, only decreases the available information that the group might have to counter their internal view of the world.

And, third, people who study religious groups have learned to take seriously the religious beliefs and rhetoric of the group. We understand the power of religious symbols to create its own alternative logic. While what that group says may sound to us like Bible babble, as it did to the negotiators in Waco, no real negotiation is possible unless the group's religious world view is taken as the operative one.

This case, in short, highlights the need for law enforcement to take seriously the complex human dynamics of the situation that it confronts. When those situations include religious groups, wise strategists will take seriously the power of those religious beliefs and will weigh carefully the competing claims of religious liberty against the legitimate societal limits that need to be placed on that liberty.

Thank you.

[The prepared statement of Ms. Ammerman follows:]

PREPARED STATEMENT OF NANCY T. AMMERMAN

During the summer of 1993, following the siege at Waco, I was asked by then Deputy Attorney General Philip B. Heyman to serve on a "panel of experts" to help the Justice and Treasury Departments evaluate their actions in Waco, making recommendations for changes in future law enforcement strategies. I was pleased to serve on the panel and submitted my report in September of that year. I chose to focus my energy on the uses of behavioral science expertise in law enforcement, and it is primarily that issue that I would like to bring to your attention as you discuss changes for the future. I want to address you both as a sociologist specializing in the study of conservative religious movements and as a citizen concerned about the role of law enforcement in our complex democracy.

I am convinced that at the heart of the disaster in Waco was the decision—first by the BATF and then by FBI tactical units—to treat this as a military-style operation. Everyone's energy went into assessing firepower and angles of attack, leaving the human dimension of the situation too easily forgotten and allowing, in addition, the suspension of full press access. As a result, the public did not get the information it needed for offering an informed critique, and the decision-makers did not get the information they needed for informed strategy.

It is my contention that it is essential in any action that involves a dissident religious or political group to remember that these are first of all human actors, most of whom do not define themselves or their situation primarily in military terms. Neither should we. We should make every effort to understand the logic of their religious beliefs and proceed with full respect for the citizenship rights of even the most outlandish groups, even when they may have broken the law. Our democratic system demands nothing less. Defining situations primarily in military terms and failing to assess the relevant social, religious, and behavioral dynamics of the case too often allows mistakes in judgment that also turn out to be counter-productive. Let me illustrate from this case.

1. In initial planning for the serving of a warrant on David Koresh, the BATF consulted with no behavioral science experts at all. All of their planning was based on building up a legal case against the group and planning a military assault. Quite simply, the agency pursued the line of action—armed assault—for which they were best equipped. In pursuing an armed assault, however, they neglected to prepare for alternative modes of intervention.

If they had been better equipped to consider human science advice, they might have acted differently. For instance they might have questioned some of the sources of their intelligence on the group. Behavioral scientists who have studied people who leave high-intensity religious groups, especially when they leave with the aid of people who specialize in "deprogramming," note that such ex-members often become very bitter about the group they have left and exaggerate its evils. Given that the BATF was relying on a deprogrammed ex-member and a professional deprogrammer for information on the Branch Davidians, it is reasonable to believe that the danger posed to agents was probably over-stated and that other avenues of access to Mr. Koresh might have been possible.

2. When control of the situation was yielded to the FBI, that agency, too, eventually came to define its task primarily in military terms, using psychological warfare techniques, tanks, and finally a tear gas attack.

In this case, the problem was not the absence of behavioral science advice, but the failure to heed it. The memos prepared by the FBI's behavioral science team in the early days of the siege are quite stunningly on target. They recognized the dangers in the situation, recommended some unconventional tactics, and warned against military-style pressure. But they were soon out-ranked and out-numbered in the decision-making at the scene, with disastrous final consequences. If the human dimensions of law enforcement tasks are to be taken fully into account, those who have human science expertise must have equal rank with those whose expertise is firepower.

In addition, a broader range of behavioral science advice is needed. Quite understandably, law enforcement agencies have relied on psychologists and psychiatrists to help them understand the inner workings of troubled criminal minds. However, some situations call for understanding more than the individual psychologies of law-breakers. Where a group is involved, it is essential to understand the sociological dynamics of group behavior; and where religious or political protest is part of the group's identity, experts in religious and political movements can be invaluable. For instance, sociologists and social psychologists would have advised that any group under siege is likely to turn inward, bonding to each other and to their leader even more strongly than before. Outside pressure only consolidates the group's view that

outsiders are the enemy. And isolation decreases the availability of information that might counter their internal view of the world.

This case especially illustrated the dangers in discounting the potency of the religious beliefs of a group. There seemed to be a widespread tendency among the agents involved at Waco to evaluate this situation largely in terms of the leader's presumed individual criminal/psychological motives, assuming that religious beliefs were simply a convenient cover for criminal activity. Even after the end of the Waco siege, both negotiators and tacticians persisted in describing Koresh as a sociopath who had duped some people into helping him carry out aggressive criminal activity. They continued to refer to the people at Mt. Carmel as hostages, failing to recognize the free choice those people had made in following Koresh.

Behavior science advice, then, failed to get an adequate hearing. In the culture of the law enforcement community, neither training nor experience prepared agents for taking behavioral scientists or religious believers seriously. In the crisis situation, behavioral scientists were out-ranked and out-numbered, and those in charge dealt with this religious group within a framework more familiar to them—that a criminal committing illegal acts for personal gain for whom the threat of force is a significant deterrent.

What can be done? In my report to the Justice and Treasury Departments, I recommended four concrete steps. In brief, they are as follows.

1. Basic training. The training for all agents should include units in the behavioral sciences and units that give attention to the nature of political and religious groups. These units should emphasize both the rights of such groups to exist unhindered and the characteristics of high-commitment groups that may be relevant to future efforts at law enforcement. Such units should be aimed not so much as making every agent an expert as at sensitizing agents to the complex human dimensions of the situations in which they may find themselves. When they hear behavioral scientists advising them later, it will not be the first time they have heard such voices in the law enforcement community.

2. Advanced training. Incidents like Waco are, fortunately, relatively rare. Not everyone in federal law enforcement needs to be an expert on such situations. However, it appears that there is a need for a standing group of specialists in managing this sort of crisis. Rather than turning to whoever happens to be the local SAC, the FBI (and similar federal agencies) should have a small corps of crisis managers available. These persons should have received advanced training both in the various tactical measures at their disposal and in the insights available to them from the behavioral sciences.

3. Training and expertise for other federal agencies. An expanded Behavioral Sciences unit, perhaps not lodged in a single agency, might make a broader pool of behavioral science information available on a regular basis to all federal enforcement agencies. I was particularly struck by the fact that BATF has no such unit. No one ever had the responsibility of imagining what the people in the compound were like, how they might be thinking, etc. With dozens of federal law enforcement agencies, it would not be cost effective to set up behavioral science units in each one, but all of them need such expertise available to them.

4. A broader pool of experts who can be consulted. Not all sorts of expertise are needed all the time. But agencies should not be caught in a moment of crisis wondering who to call and how to assess the credentials of those who call them. It is essential that behavioral scientists inside federal law enforcement and behavioral scientists in the academic community forge expanded working ties.

To help in locating experts and in evaluating the credentials of volunteer "experts," law enforcement agencies can turn to the American Sociological Association, the American Psychological Association, the American Psychiatric Association, the Association for the Sociology of Religion, or the Society for the Scientific Study of Religion.

A final word. The Branch Davidians were not just any group; they were and are a religious group, and that raises special issues for law enforcement. One of our most precious freedoms is the freedom to put our religious convictions into practice without fear of interference from our government. I am a Baptist, and it is deep in my bones to stand up for the rights of dissident religious groups. My religious forebears went to jail to defend their own rights to preach and baptize and teach as they saw fit. To their great credit, Baptists like Roger Williams also saw that their own rights meant nothing if they were not also extended to even the most unusual minority religions around.

Throughout our history as a nation the limits of religious tolerance have constantly been tested. Whether Baptist who did not want to baptize infants or Mormons who practiced plural marriage or Native Americans who use peyote in religious rituals, the boundaries are always being tested—sometimes expanding, some-

times contracting. As a society we certainly have an obligation to determine what behavior cannot be protected under the First Amendment. But our means for making that determination must be a reasoned argument through public and legal means, not over-reaction fueled by public fears of strange beliefs and practices.

Our problem in dealing with the shifting boundaries of religious tolerance is often, again, our failure to understand the basic characteristics of dissident religious groups. Among the many things that sociologists and other students of American religion have learned are:

Religious experimentation has been extremely pervasive in America history. From Puritans to Shakers to Mormons to Unificationists, America has proven rich soil for people with a new religious message and the desire to establish a new religious community.

New or dissident religious groups are often "millennialist" or "apocalyptic". That is, they foresee the imminent end of the world as we know it and the emergence of a new world, usually with themselves in leadership roles. This often leads to extremely militant and vivid rhetoric about this imminent transformation of the world. As the end of this decade approaches, we can only expect such rhetoric to increase.

That rhetoric creates for those in the group an alternative symbolic world. Ideas about "logic" as we know it simply do not hold, but that does not mean that the group has no logic. The first dictum of sociology is "Situations perceived to be real are real in their consequences." Religious symbols have the power to define the way people see the world.

Many new religious movements do indeed ask for commitments that seem abnormal to most of us, and those commitments do mean the disruption of "normal" family and work lives. They are high commitment groups, not casual associations; but the right of individuals to make such total religious commitments must be honored.

Indeed, the vast majority of those who join high-commitment religious groups do so voluntarily. The notion of "cult brainwashing" has been thoroughly discredited by reputable scholars. After years of direct research with dozens of groups that are often labelled "dangerous cults," social scientists have found little evidence of anything other than sincere religious seeking among those who join.

The usual fate of most new religious movements is quiet extinction through natural causes, and many people who join them do not stay on a long-term basis.

But while they exist, they almost always provoke their neighbors. They argue, after all that the rest of us are wrong.

Religious groups are, then, in their own way, a form of protest. They may sometimes break the law. When they do, law enforcement agencies must respond. In the future, perhaps, that response will be better informed by knowledge that comes from fully assessing the social, religious, and behavioral dynamics of the situation, leaving aside the temptation to define these dissidents as enemies to be conquered through military-style tactics.

The CHAIRMAN. Thank you. We will have one round of 10 minutes each for questioning, and maybe I can start it off.

Let me just ask you, Dr. Fyfe, how can Federal law enforcement agencies be better prepared so the appropriate response to crisis situations like Waco is both considered and available?

Mr. FYFE. I think the question is one of accountability, Senator. I don't think that there is any doubt that Federal law enforcement agencies are the best trained in the United States, and I think the standards exist, the protocols exist, the principles are there for negotiating rather than shooting out of situations. And I think the major issue is a sort of disregard and a sense that the rules are more flexible than they really are.

The thing that has troubled me about both these incidents was that when I look at Federal rules and policies for potentially violent encounters, I understand that they are made for unusual crisis situations. It seems to me that in both these situations, those rules were disregarded on grounds that these were critical, unusual crisis situations.

So, I think the question is how we get people to abide by the rules that already exist.

The CHAIRMAN. You have discussed today the importance of proper research and information gathering as well, when developing a law enforcement operations plan. What is likely to happen when you have situations when research collection and intelligence processing are not properly conducted?

Mr. FYFE. You get unhappy endings to situations. I learned this at the local level with police officers who work on an individual basis, and the thrust of training for police officers on patrol around the country is to try and get them to learn about the areas where they work, to plan for the kind of predictable emergencies that they will run into; and when they do that, they are much more likely to produce a happy, bloodless ending to crisis situations.

The same things hold true at the larger level, at the macro level, like this situation.

The CHAIRMAN. Has there been a change in the pattern and practice of law enforcement with respect to tactics versus negotiations, say over the past decade?

Mr. FYFE. I am concerned that there is. I come from an unusual place, I suppose. I was a New York cop for many years, and we took great pride in being the place that basically developed hostage and barricade negotiations procedures. I think Frank Bolz, who will testify tomorrow, is really the pioneer of all that.

Our definition of success in a hostage or barricade situation was always a bloodless resolution, and people worked as hard as possible and as long as possible to obtain that result.

What I see in this situation, and in several others at the local level lately, is a real tension between the negotiator and the tactical people. I spoke, not too long ago, to a person who was a sniper for a municipal police department. Just the title, sniper for a police department, bothers me. It has nothing at all to do with community policing. But his view was that there are two approaches to hostage situations: One he called the Western view, and the other is an Eastern view. And the Eastern view is the one to which I subscribe, and that is that police officers should take as much time as possible to negotiate people out of situations and should define success in the absence of bloodshed.

His view of the Western protocol was that police officers should regard negotiations as a means of manipulating people into positions where a tactical resolution could be executed. I am very troubled by that. I don't find anything in written standards that conform to it, but I have seen lots of incidents where that seems to have been operative.

The CHAIRMAN. Well, thank you.

Dr. Ammerman, I was interested in your comments very much and your written statement, which is even more detailed. How can Federal law enforcement agencies be better prepared so the appropriate response in a crisis situation is both considered and available?

Ms. AMMERMAN. I think there are a variety of things that need to be done. One is to really start at the basic training level so that when people are in the field, they not only have the set of guidelines that Mr. Fyfe is talking about, but that they have a background that sensitizes them to behavioral science kind of information, so that when they hear behavioral science advice and voices,

this is not something new to them, that they are not utterly existing in a culture in which tactical force is the only way to enforce the law.

Also, I think it is very important for the Federal Government to have available to it people who have more specialized training in dealing with the particular kinds of situations we saw at Waco. Fortunately, that doesn't crop up every day, so we don't need every agent on the line to have that kind of training. But we do need to have a pool of people who spend more time finding out about religious and political groups that may, in fact, pose a problem for the rest of us in society and how we can respond to them without bloodshed. So those kinds of specialized units need to then be available to all of the Federal law enforcement agencies.

I think also this situation has provided a kind of opportune moment for us to realize that there is, in fact, a large pool of expertise potentially available to Federal law enforcement, but that we need to have regular forms of communication between the academic community and Federal law enforcement that allow that larger pool of expertise to be called on in situations like this, so that people are not faced with the situation of being in the field, on the spot, trying to figure out who is an expert and who is not.

The CHAIRMAN. Tell us the best way that you have for Federal law enforcement to tap into the network of experts and consultants who might be available in the private sector to help them, not only in these types of situations but to prepare for these types of situations.

Ms. AMMERMAN. Well, there are a number of professional academic associations that seem to be quite logical places to go for situations like this: The American Sociological Association, the American Psychological Association; for religious groups: The Association for Sociology of Religion, the Society for the Scientific Study of Religion; the American Academy of Religion; a number of well-recognized professional organizations that maintain offices that can be very helpful, so that with one phone call, recommendations can be made about a series of people who might be particularly helpful in a situation like this.

The CHAIRMAN. Thank you. Just one other question before we turn to Senator Biden. You have discussed today the importance of proper research and information gathering when developing a law enforcement operations plan. You have suggested that experts in various fields be consulted before an operational plan has been developed. And I know that one of the concerns that law enforcement people have is that experts or academicians might possibly tip off the suspect group that a Federal agency is investigating.

Do you perceive that as a real concern? And if it is, how do you prevent that from happening?

Ms. AMMERMAN. It seems to me that the academics I know would certainly be eager to work with law enforcement in responsibly helping us as a society to deal with difficult situations and would be more than willing to abide by the kinds of strictures that that law enforcement agency felt to be necessary in planning for an operation. Those are situations—I can imagine potentially being difficult situations of conscience, perhaps, for an academic who felt perhaps that he or she had more than one loyalty. But I also know

that we who are scholars of religious groups feel a large sense of loyalty to our larger society and are more than willing to participate in helping to make our society a more hospitable place for all of us.

The CHAIRMAN. Senator Biden, we will turn to you.

Senator BIDEN. Thank you very much. I want to thank you both for being here and for your input, not only today but through this process. I want to make clear to the public who may be watching that neither of you is new to this. And, Dr. Fyfe, this may hurt you more than help you, but your book, "Above the Law," is the text which I, quite frankly, used and my staff used to write the police brutality provisions in the crime law that we have, and to determine how to target departments based on pattern or practices of abuse. It was very helpful to us.

I hope you like the final product that we put in the law. I don't know. That is not the reason for the hearing, but the point is to indicate to you that I have great respect for you and have already taken advantage of your expertise, hopefully in a positive way.

Mr. FYFE. Thanks, Senator. I really appreciate that, and I am very impressed with the wording of the law.

Senator BIDEN. Please don't be offended if I don't have questions. I think your statement was clear and concise and to the point.

I have one request. Maybe it should be a question. Dr. Fyfe, I agree with your notion that it would be nice if we could define what a good cop is. Have you ever attempted to do that, literally attempted to do that in writing? I don't recall it from the book. Maybe I missed it, but has that been undertaken by you or any other academic that you are aware of?

Mr. FYFE. Yes; it has, and I have written about it a bit. My experience as a police officer was that all cops knew who the good cops were. They were the officers people wanted to work with, who didn't get into trouble, who were predictable and not crazy, and always had the right answer. So what we tried to do with an experiment in Dade County was to ask police officers to identify the persons among them who were the good cops and then to ask those officers to sit down and tell us how they would respond to different potentially violent situations.

So we gave those officers a sample of 100 incidents that had gone bad in the sense that they resulted in some use of force or injury or a complaint against a police officer, and we asked them to tell us what decisions the officers had made and how those had affected the outcome in negative ways.

We then built those things into training, trying to clone the good cop and what the good cop knew, and put them out on the street. And I can tell you that since 1989, when everybody in the Metro Dade Police Department was trained in these principles, the outcomes we were looking for—complaints against officers, use of force by officers, and assaults on officers—have all declined by 30 to 50 percent.

Senator BIDEN. Well, that is great. Is there an actual manual or a copy or—

Mr. FYFE. I would certainly make that available to you, Senator.

Senator BIDEN. With the permission of the chairman, I think that would be very important to be made available for the record, and I personally would like to see it as well.

Mr. FYFE. Sure. I think the important point there is to start by asking the people who know the officers best and who have the most success in resolving potentially violent situations and trying to take what they know, systematize it, and give it to other officers and agents.

Senator BIDEN. Which leads me to the next point, and I only have one question for you, Dr. Ammerman. It is amazing to me just in the years that I have been a U.S. Senator—and though I have not worked with cops as a cop, I have worked with cops as a public defender, in the middle of it and in the family court, and in juvenile justice systems before I had this job—how drastically things have changed in terms of what police perceive to be—and I would argue reality indicates has occurred—the dangers they face. Their changed circumstances, their increased vulnerability, and their, in some cases, almost intractable dilemma they find themselves in because of the nature of a whole range of things account for this and I wish I had the time to discuss this with you as a sociologist.

I remember, Dr. Fyfe, when you were on the New York Police Department, the big issue was Saturday-night specials.

Mr. FYFE. That is no more.

Senator BIDEN. If only Saturday-night specials were our main problem again. You know, these guns that blew up in the hands of the assailant half the time, if we only had those instead of MAC-9's or whatever.

So the whole thing has changed, it seems to me, not in terms of the human dimension, what causes people to do what they do—although I think that circumstances have aggravated those factors as well. But we have a whole new phenomenon here. Hopefully, Waco is a case of first instance and last repetition. Up to now, we haven't had to deal with, we haven't had to think about, terrorism, which is not Waco. We have not had to think about terrorism on our shores.

I have been involved in this for a long time in the Intelligence Committee and then in the Judiciary Committee and the Terrorism Subcommittee, and terrorism was something that happened somewhere else. The idea that something would happen like what happened in the Tokyo subway or something would happen like what just happened in Europe in a subway system—that doesn't happen here. Not in America.

Second, the idea that we would have—and to avoid an unnecessary argument that has nothing to do with the point I am about to make, let me exclude the Branch Davidians from what I am about to say—a generation of some real wacko groups out there is astonishing. Not Waco, but wacko groups that premise their actions upon religious activity, religious beliefs, whether it is something coming out of the Bekaa Valley or whether it is in the Middle East or whether it is something coming out of the mountains of Idaho or the fields of Delaware. This is a new phenomenon in terms of our dealing with it as a matter that could or may impact upon the safety, health, and well-being of the participants as well as the citizenry at large.

And, so, I view this as a place from which to start, and in hindsight we could say we should have started 5 years ago or 10 years ago or 20 years ago. But as we start from here, one of the things that intrigues me, Professor Ammerman, is your comments and your statement and your report where you emphasize how important it is for law enforcement to know the views of behavioral scientists.

On page 9 of your report, you conclude, and I quote, "Knowing these things might not have changed the outcome in Waco. It is unclear to me whether any negotiating strategy could have succeeded in getting most or all of the members to leave the compound."

The reason I quote that—and I sincerely mean this. I am not trying to be argumentative here, but I am trying to understand. Where does that leave us? If after months of thought that went into your report you are still unsure as to whether further negotiation would have changed the result in a marked way, if you are a field commander and your behavioral scientist says it is unclear or you have got several other reasons why it is important to act soon, such as losing tactical readiness of your officers or losing the security of the surrounding area when you go forward in a tactical operation, what does the guy or the woman in the field do? Operationally, how does that ultimately—do you understand what I am trying to say?

Ms. AMMERMAN. Absolutely.

Senator BIDEN. We have an expression, if I can make it clear here. I will never forget as a young lawyer the first case I ever had in the family court. It was what we call a competency hearing. And I was a young kid, 6 months out of law school, and this involved a 16-year-old accused of a very serious crime. Under Delaware law, in order to be tried as an adult for that crime, you had to go to the family court and have what they call a competency hearing to determine whether this person was competent to stand trial as an adult. And so I was assigned to defend this young person, and I had met with a psychiatrist who had gone to the prison to interview this young person and so on and so forth. And there was an old judge whose nickname was—he hated the nickname—Apples Riordan, former judge, was the chief prosecutor for the State, was then 71 years old. And I walked into the courtroom and looked up at a fine, a revered judge in our State—he passed away—Judge Melson. And I looked up at Judge Melson, and I said, "Your Honor, I would sincerely like to ask for a postponement. My psychiatrist is tied up in another case up in the superior court, cannot be here, I think it is important." And old Apples Riordan, the former judge, the prosecutor, stood up and he said, "no problem." "He said," I will stipulate to whatever Biden's psychiatrist says. And I thought, geez, I just won. I mean, this is incredible. He is going to stipulate to what my psychiatrist says.

And I said, "Well, Your Honor, since there is no objection then, proceed." And as I stood up to say that, old Apples Riordan looked and he says, "On one condition. I can bring in a psychiatrist tomorrow because I guarantee you I can find one that will say the exact opposite, Judge."

It seems to me, with all due respect, that is where you sociologists are these days on the issues of cults, on the issues of religion.

It is not to suggest we should not seek your input. But tell me, what does the commander do when—do we look at a curriculum vitae? Do we look at where he went to school? Or what do we look at to determine who the heck——

Ms. AMMERMAN. I will be glad to respond.

First of all, I would want to say that at the time that that report was written, I did not have all of the information that I now have, and I am not sure I would have even written that one qualifying sentence in the report if I had had the information I now have. If someone——

Senator BIDEN. Would you have had it had you been on the scene, do you think, in real time?

Ms. AMMERMAN. Yes; as a matter of fact, because the information I now have is transcripts from the negotiating sessions and so forth that represent what was, in fact, going on there, that demonstrate very clearly that the negotiators did have a viable strategy of negotiation ongoing, that they had an understanding with Mr. Koresh about writing his document that would explicate his understanding of the Seals; that, in fact, on the morning of the fire he was ready to deliver the first part of that manuscript as a sign of good faith.

That is information that I now have that I did not have, so that that one sentence in my report was intended to say that none of us can ever in hindsight be absolutely positive that something would have gone differently if we had but been there to advise people. So the other 10 pages of the report lay out the ways in which I frankly think things would have been different if social science advice had been heeded.

One other point. I think it is important to say that within the social science community, sociologists and scholars of religion, there is, in fact, very clear consensus about the way in which this group operated and the way in which law enforcement tactics exacerbated that situation. There were, in fact, differences of opinion among the psychiatrists, but very little difference of opinion among the sociologists, if I may say.

Senator BIDEN. I want to make it clear. I realize my time is up, Mr. Chairman, but I want to make it clear I agree with you. I don't have any academic background to draw the conclusion I drew. I can recall debating with my staff the day they went in, saying, Why are they doing that? I could not understand why that occurred. But that was just instinctual. It was not based on any professional background I have. So I am not arguing with the conclusion. Nor am I arguing with the value. Indeed, I would argue, there should be an increased premium on sociologists and social scientists giving us input into what motivates people who are more in abundance than they were in the past in terms of organizational structures.

I just would like you for the record to lay out for us what operational scheme you would suggest, assuming that, based on your report, you get a sociologist, psychiatrist, psychologist, these experts. And I do not denigrate, I mean that sincerely. I want that information. But is there an operational mechanism that you suggest as to how they interface with anything other than giving advice? Is that where it ends, or do you suggest any larger, wider operational role?

Ms. AMMERMAN. I am not a law enforcement expert here. But it seems to me that it is important that some sort of mechanism be put in place where the advice of behavioral science people have some strategic clout in the decisionmaking process, that it not be simply advice that can be shrugged off and ignored, as it certainly seems to have been at Waco.

Senator BIDEN. That is the part that confuses me, and I would truly like—if you have anything in writing to indicate how you would operationally do that, it would be very helpful.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Biden.

We will turn to Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, I will make a few points before I ask my questions of the first panel.

First of all, I think we all want to start with the premise that all cops are good cops, at least until you find out otherwise. We ought to have the benefit, give them the benefit, because respect for law and order are basic to our society, and respect for law enforcement, it seems to me, is the basis for respect for law and order.

Waco and Ruby Ridge are exceptions to this, but exceptions magnify problems, and if we don't correct them, it erodes public confidence, and that is why I think we are holding these hearings. So I commend the chairman for the approach that he takes in these hearings. I think they are designed to explore underlying problems that led to Waco and Ruby Ridge, so that we understand these problems better, we can conduct effective oversight, which is the responsibility of this committee.

In my opinion, the tragedies at Waco and Ruby Ridge were caused in large part by the militarization of law enforcement. Because of their infatuation with military tactics and gadgetry—and I guess it is best demonstrated by this photo here—some law enforcement outfits have come to resemble kind of “keystone ninjas.” This phenomenon militates against the No. 1 mission of law enforcement, which I understand to be the preservation of life.

The goal these agencies need to get back to is being law enforcement and not military. They need to resist the temptation of military toys and equipment and tactics. Those things are glamorous and sexy, of course, and they can be useful in empire-building. But they cannot coexist with law enforcement, and that is because their objectives are in conflict. You cannot preserve life using a military.

And so these hearings will help this committee understand the underlying problems that led to the disaster at Waco. That way we can oversee fundamental changes in the structure and especially the culture of law enforcement agencies.

Obviously, David Koresh was no hero. He was a despicable rogue, I believe. It is hard to lay blame for the tragedy at Waco without pointing a finger at him.

The question with respect to Mr. Koresh is: Did he deserve what he got, criminal that he was, or were law enforcement officials

obliged to bend over backward to preserve his life and those of all others involved?

In reading materials prepared for these hearings, I note that many in the law enforcement community feel Mr. Koresh got what he deserved. Others are harshly critical of that view. I would like to explore that question this morning and tomorrow.

These 2 days of hearings I think will uncover the excesses of the military influence in law enforcement. Both ATF and the FBI had very deadly military capabilities. The military option was used as a first resort, instead of as a last resort. And for very different reasons, these capabilities got out of control.

ATF, for example, deployed its Special Response Team, but they were woefully undertrained. Major breakdowns occurred in intelligence, communications, command and control, and tactical support. The situation was kind of like giving keys to a teenager to drive the car without having driver's training. A car is a very dangerous tool, and that is what happened with the ATF's SRT unit, I believe. They were undertrained, not prepared.

Now, the FBI, it seemed to me, had an opposite problem. Its HRT is overtrained. They are trained to a razor's edge. They imposed themselves forcefully on the scene at Waco. The swash-bucklers were in control.

Whenever Koresh would respond favorably to a request from negotiators, his reward would be psychological warfare from the tactical unit. You will recall at Ruby Ridge, these very same tactical people sent in a robot with a shotgun attached to negotiate with Randy Weaver. The equivalent in this case was trying to get Koresh to come out by turning off his electricity, playing "Dying Rabbits," and doing it very loudly, and called him a cartoon character. In my book, this is called the Neanderthal option. There is no place for it in law enforcement.

So it is my hope that these hearings will serve a useful purpose, and I hope that useful purpose will be to reign in the military option and to help law enforcement get back to being cops. We cannot have a situation in which our military troops in Somalia could not get tanks, but the FBI had them at Waco. This is an upside-down logic.

To their credit, both the ATF and the FBI have taken positive steps toward restructuring. Still to be addressed, in my view, though, is the cultural problem. That is one area that I want to address in my questions these 2 days.

So for both of you, I would start by asking about something that the U.S. Justice Department did in soliciting the recommendations of experts in its review of the Waco disaster. One of those experts, Ron McCarthy, a consultant from California, stated that other options could have been available under different circumstances, but that in no way would he suggest that the authorities are in any way at fault for the final outcome of the Waco incident. He states that only the adult participants, criminals and fanatics inside the compound, are responsible and at fault for the deaths of the children. He further claims that the failure of the FBI's maneuvers on day 51 are the result of the unlawful and bizarre actions and mindless aggressions of the criminals inside who slaughtered their own children.

Do you believe such an attitude will contribute to improvement of law enforcement response in future crises?

Mr. FYFE. Senator, I must say I know Ron McCarthy and regard him as a friend, but I disagree with him. I think a cultural problem that has permeated policing for generations is a fascination with technology. If you think back even to Chester Gould and his crime-stoppers textbook in "Dick Tracy," you will see that gadgetry was always something that was seen as something that could resolve police problems.

My experience is that policing and law enforcement are really human interactional jobs. They are one-on-one jobs, and the important skills and equipment are the officer's ability to deal with people rather than the hardware he has at his or her disposal.

I will give you an example. As I sit here, I recall an incident that was not much different from the Koresh incident. In 1977 or 1978, just before I left the New York City Police Department, a sergeant and a police officer pulled over a traffic violator on the Lower East Side, and the police officer took the man's license and registration and started to walk back to his police car with it. The traffic violator suddenly pulled out a gun and shot and killed the two of them. He then went and took his driver's license from the dead police officer's hands and drove off.

Several people recognized him. He was a neighborhood character, and there followed a manhunt in the Alphabet City section of the Lower East Side of Manhattan, unlike anything I have ever seen. And it went on for 2 or 3 weeks unsuccessfully.

About 4:30 in the morning, two detectives who were sitting in that squad room that is used in "NYPD Blue" got a telephone call from an individual who said that the guy you are looking for is in an apartment on East 13th Street; I have the phone number, but I don't know the apartment number.

Well, the house is a very large building. There was 75 or 80 apartments in it. And the two detectives had been told that the man was going to leave in the morning. He was being sneaked out of the city and being transported someplace else. But the informant wasn't sure when that would happen.

So we had these two detectives who had this information about an individual who might leave a 65- or 70-family apartment house any minute, who was wanted for what the cops regarded as the most heinous kind of crime, and who presented a problem because the officers didn't know precisely where he was.

What the officers did in that situation was something I have always regarded as the most imaginative and successful kind of police work. They did not engage in any high-technology operation. The two of them raced to the scene, and one called the phone number and said, Chino, the police know that you are in there, you better get out. And he hung up. And Chino came walking out the front door in a hurry, and the other officer grabbed him right at the front door.

The thing that has always bothered me with the Koresh incident is why that didn't happen in this situation. A fundamental principle in law enforcement is that it is better to get them to come to you than it is for you to go to them. It is better to make them come through the doorway than it is for you to go through the doorway.

I don't see why that was not done. It seemed to me that there were opportunities to do that, and to suggest otherwise really damages the cause of effective law enforcement.

Senator GRASSLEY. Ms. Ammerman.

Ms. AMMERMAN. Yes, I think the statement that you read I find in many ways very troubling because of some of the language that is in that statement about this being a mindless group, a criminal group. Criminal may be correct in the technical sense of the word, but to characterize the group as mindless is to assume that there is no internal logic, that these are not equal human beings with the rest of us. And I think as Mr. Fyfe has been pointing out, law enforcement at its best treats the situations in which it finds itself as human relations situations. And when we have demonized the people that we are dealing with, when we have seen them as mindless and only criminal, we therefore lose the advantage of seeking to understand the particular point of view that they have and therefore engaging in the kind of good, smart law enforcement that we can, in fact, engage in.

Senator GRASSLEY. Mr. Chairman, I am done. I want to just say, though, we are going to have 2 days of hearings. I think it is very important that beyond the 2 days of hearings we watch to see if this culture is changing. And I think that that is a very important oversight function of this committee, to not just have a hearing. And I know the chairman wants to go beyond just having a hearing and be very responsible. But I think we just have to observe within law enforcement: Is this culture changing?

The CHAIRMAN. Thank you, Senator. I appreciate it.

Senator Simon, we will turn to you.

Senator SIMON. Thank you very much, Mr. Chairman.

First of all, I thought your opening statement was an excellent one. It was balanced. It said what should be said, and I appreciate it, Mr. Chairman. You said we have to find lessons, and I think that is where we are. I would also underscore what Senator Biden said. There was no improper motive here. People wanted to do an effective job. And mistakes were made, tragic mistakes. And I think we should underscore also my impression over the years dealing with the FBI and the ATF, the American people generally can be very proud of the work that these two organizations do.

There is a tendency on the part of the public as well as the police to exaggerate a threat from "people who are different." In your statement, Dr. Ammerman, you say, "Behavioral scientists who have studied people who leave high-intensity religious groups, especially when they leave with the aid of people who specialize in deprogramming, note that such ex-members often become very bitter about the group they have left and exaggerate its evils."

I think that is true, and we tend to—we demonize, if I can use a word here for a seminary professor, we demonize those who are different.

We have gone through this a great deal. We are going to have a Democratic convention in Chicago. I think one of the reasons for the difficulties in 1968 was there were exaggerated reports by Federal officials to Mayor Daley about the nature of the threat, and then there was an exaggerated response to what was taking place. And I see that happening over and over again in history.

The Mormons were in Illinois in the 1840's, and because they had some—polygamy was then practiced by some, but rumors were rife as to what they were doing, and you ended up with a military force that went after them. You had Joseph Smith killed.

If we had some understanding of the other side, there would not have been that situation. And I see this happened, February 1942, when we took 120,000 Japanese-Americans away from the west coast. No justification. Not a single person committed a crime.

Anti-Semitism, unfortunately, has been part of history, not only in our country but in other countries, where people who are different are made to be scapegoats.

In Springfield, IL, a few months ago, a mosque for a handful of Muslims was burned down.

What the public has to understand is they can't take things into their own hands, but law enforcement officials also have to understand and not exaggerate the other side. I think that is extremely important.

This is a digression now, Mr. Fyfe, but what you said about the one-on-one relationship, that really is the key to good police work. It is not getting the latest piece of equipment, the latest computer. Yes, they can help, but it is that one-on-one relationship.

Let me just ask a very fundamental question, and this is easy. Hindsight is an easy thing, and we are going through an exercise in hindsight, but an exercise, as Senator Hatch has pointed out, that can teach us some lessons.

If you had been in charge, looking back in retrospect—and you have both partially answered this—how would you have handled things differently?

Mr. FYFE. My answer to that, I think, is best illustrated by what I was doing at the time. A few days before the assault on Waco, the second assault on Waco, I testified in a case in Phoenix, AZ, in defense of a police officer who had been called to a situation in which an emotionally disturbed young man had taken up a rifle and barricaded himself in a church. The State police and the local police responded and did what I thought were all the right things. They set up an inner perimeter and an outer perimeter and remained behind cover and tried to negotiate with him. And he came out on several occasions and pointed the rifle around. No one ever took a shot at him. They tried to talk with him.

About 3 hours passed, and the young man came out with his rifle and spotted a police officer who peered over the hood of a car very quickly, and the officer, who was a veteran, said that the kid made eye contact with me, put the gun up to his shoulder, leaned forward in a shooting position, and I was staring right down the barrel of the gun. And the officer said, I had two choices, one was to try and duck behind the car where the rifle bullet could come right through it, the kind of bullet that Senator Biden showed, or to shoot him. And he shot him. I testified that it was a tragedy but that the officer had acted appropriately.

A couple of days later, a former FBI agent who had been very involved in hostage negotiations testified on behalf of the plaintiff in the case and rebutted what I had to say. He said that putting the police officers up close to the young man was a provocation. And on that morning the FBI had been at Waco for 51 days and

would never do anything to provoke a confrontation. And he finished his direct examination and went to lunch, and during the lunch, the conflagration occurred. And he came back and had to undergo cross-examination after the fire.

But I think the point—obviously, the defense won that case, but the point was that the assault on Waco was an absolute shock to this fellow who indicated that he had been the coordinator of hundreds of hostage and barricade situations for the FBI, and it was to me as well.

I think as Mr. Bolz will no doubt tell you tomorrow, the view of most hostage negotiation people is that you should continue to talk as long as possible, and as long as you have people talking, they can't be hurting you or anybody else, and that the officials can out-wait anybody.

Ms. AMMERMAN. I would like to add, backing up to the beginning here, before there ever was a siege, I think the most important thing that the ATF could have done is to have assessed the information they were getting by getting information that came from a variety of sources. Unfortunately, the information they were getting came primarily from the kinds of people who are most concerned about these religious groups that are different and that seem to them—that are labeled by them “dangerous cults.”

Unfortunately, it seems to me there is a large segment of the American public that finds people with different kinds of religious beliefs and practices, perhaps who live off in an isolated place somewhere, who look a little strange, perhaps, or whose beliefs simply don't fit our stereotype for what people ought to believe, if they are going to be really good religious people, we tend to find those perhaps dangerous to us. And, unfortunately, there is a fairly well organized movement that seeks to provide information to law enforcement and to concerned parents and others that tends to exaggerate the danger imposed by these groups.

In this case, there were a number of people who knew the Branch Davidians quite well, who had studied the Branch Davidians for their entire history in Waco, people at Baylor University, for instance, who were regularly back and forth between Mt. Carmel and their homes in Waco, who knew these folks. And that kind of assessment of additional information from people who do not necessarily have an interest in seeing the demise of a religious group, but rather have an interest in seeing the understanding of that group and an accurate assessment of the potential threat to the society, that, it seems to me, would have dictated a strategy that would have been far less confrontational in the beginning.

Senator SIMON. And did the Federal officials know about these experts at Yale, No. 1? And, No. 2, if they did, were they consulted?

Ms. AMMERMAN. I think that one of the things that we discovered was that the culture and the structure of Federal law enforcement tends toward only consulting the people who are already inside the system so that they don't have a ready list of people or a method for seeking out consultation beyond their own internal organization. And in this case, they should, however—they did know about the people at Baylor who were familiar with the Branch Davidians and simply did not choose to follow up on that information.

Senator SIMON. I thank both of you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

We will now turn to Senator DeWine, who was next in appearance here.

Senator DEWINE. Thank you, Mr. Chairman.

During the time that Waco was occurring, I was involved in another unfolding tragedy, and that was the riots in Ohio's Lucasville prison. At that time I was the Lieutenant Governor of the State. One of my responsibilities as Lieutenant Governor was to oversee our whole anticrime effort, which also included our prisons. And I don't mean to overstate my role in this case because Governor Voinovich was the Governor and he was directly involved. And Director Wilkinson was the one who was making the decisions on the scene.

But I am struck by some parallels between what happened at Lucasville and what happened at Waco, and let me just make a couple of comments. Then I would like for both of you to comment, if you could.

We ended up our siege at Lucasville, tragically, with one correction officer losing his life, and the loss of that correction officer, I know for myself, at least, will be with me for the rest of my life. No law enforcement officers were killed. One hostage, as I said, was—no law enforcement officers other than Officer Vlaningham was killed. Some of the prisoners ended up being killed. But we resolved that through negotiations and ultimately ended the siege.

We had available to us and utilized FBI hostage negotiation experts who were on the scene with us, who directly advised our own negotiators. We also had available on the scene FBI officers who engaged in psychological profiles, profiles of the leaders of the prison riot. And they got information based on what they could hear in the negotiations as they were going on, plus studying the files.

The point of all this is that we were very pleased with the information we received from both sets of experts. We thought the information they gave us was very good, very valuable, helped us to resolve the situation.

Some of those individuals, I am told, were also involved directly at Waco. As for the other ones, they came out of the same basic pool of talent.

I guess my question is: How do you explain the difference in results other than maybe the obvious; that is, we were dealing with a situation that it was, in a sense, a typical prison riot situation where we had hostages who were taken, who were correction officers; the prisoners were in the compound; whereas, Waco involves a different set of facts, a different set of circumstances.

I wonder if you both could comment on that, and let me just say also, Dr. Fyfe—I believe you are the one that said it—I totally agree with your comment that the goal should always be minimized loss of life. I was struck, though, by your comment that there is a natural—I don't want to misquote you, but I interpreted it as saying there was somewhat of a natural tension between negotiation people and the more tactical or military side of the operation.

It would seem to me that while that tension might exist, both of those ideally should be used as tools of the decisionmakers, and that the decisionmakers have to use both of them as potential tools, and that you go with your negotiations first, and you continue

those as long as you can, and you should have a great deal of patience. But we always knew in Ohio during the Lucasville siege, for example, that at any one moment they could start killing massive numbers of hostages and that we would have to go in. And so we looked at the military side or the force side as a contingency that we had to have prepared, had to have trained, had to have a plan, had to be ready to go, but, you know, we hoped to God we would never have to use them.

It seems to me that while there is a conflict, the way that it should be used in an ideal situation, or maybe the protocol should be, that they are both tools and they are used by the decisionmakers who ultimately have to bear the responsibility and that you always go first with your negotiations, and you go with your negotiations as long as absolutely humanly possible until the people who are holding your hostages take such action that you simply have no choice but to go in with force.

Ms. AMMERMAN. I think the most important—

Senator DEWINE. So I would like for both of you, if you could, just to comment on that and maybe comment on the difference—it has struck me ever since both these events occurred, we were using the same type of people, and we were very grateful to have them, and we thought they did a hell of a good job, frankly.

Ms. AMMERMAN. I think you are absolutely right that there is a great deal of skill and compassion and caring available in these law enforcement agencies. What is absolutely critical to understand about the difference between the two situations you describe, however, is that there were no hostages at Waco. The people who were inside the buildings in Mt. Carmel chose to be there. We can argue about the situation of the children there, but, nevertheless, those children were with their parents, and their parents chose to be there. So you didn't have a situation where it was likely that someone inside is going to start killing off other people inside.

So it is a fundamentally different kind of negotiating situation. I would certainly agree with you that the two kinds of strategies always have to be available, but that the balance of how one measures the use of each of those strategies has to be determined by the particular situation in which you find yourself.

The Waco situation was not one in which these are people who have a past history of criminal behavior, who are primarily oriented toward—the same kinds of arguments about force and about the use of force that people in the prison might have been.

Senator DEWINE. If I could just follow up, because I want to keep my thought on that, though. I understand that distinction. But I assume you have had the opportunity to thoroughly study as many documents as you can get your hands on in regard to what happened at Waco. I guess what I am trying to determine is: We thought we got good information from the psychological profile people, for example. We felt we had good information from the negotiation experts who were advising our negotiators.

Do you perceive the problem at Waco as being bad information from those same people, or do you perceive the problem as being the decisionmakers not utilizing that information correctly?

Ms. AMMERMAN. In the very early days of the FBI handling of the siege at Waco, the behavioral science profilers wrote what I

would see as an extremely careful and accurate assessment of the situation that they found themselves in. They identified the fact that this was primarily a religious group that was driven by a set of religious beliefs that saw the FBI as the enemy and, in fact, a predicted enemy; that, in effect, the FBI was now playing into the very prophetic scenario that David Koresh had laid out. They saw the danger of mass suicide. They saw the way in which increased force was only likely to increase the resolve of the group. They saw the way in which the group understood its home as a kind of sacred ground that was now being violated by outsiders. So they understood what they needed to understand, and they made what I thought were very astute recommendations, and they were overruled.

Senator DEWINE. Dr. Fyfe, I didn't give you a chance to comment. I apologize.

Mr. FYFE. Thank you, Senator. I would just take that down a level and say that I am sure that Mr. Bolz will tell you tomorrow that one of the first things police officials who are hostage barricade situations try and do is a diagnosis of what they are dealing with. The police generally have broken hostage-takers and barricaded persons down into three types. The treatment that you give those people depends on the diagnosis you make.

One type is a rational offender who is caught at a scene because he couldn't get away in time, the bank robber who takes hostages in a bank, like the person in a prison is usually someone who has been caught doing something that he hopes will change his life and who wants to continue his life and who can be intimidated, usually, out of giving up hostages or out of his barricaded situation.

The other two, however, are people who are deranged, people who are emotionally disturbed, and you can't threaten those people out because they are not rational. They may not want to live.

And the third type is people who take hostages or barricade themselves for some political or religious reason, and an awful lot of those people want to become martyrs.

So, as Senator Grassley pointed out, the first responsibility of the police is to preserve life. So the police should do everything possible to make sure that these people are not given an opportunity to become martyrs. And the way to do that is to continue to try to talk to them rather than to intimidate them or provoke them to martyr them.

Senator DEWINE. Thank you. I see that my red light is on. My time is up. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

We will turn to Senator Feinstein now.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Let me begin with a summary statement on my part. I have concluded from my review of the facts that the negotiation tactics used at Waco were deeply flawed and really doomed to fail, and the reason is because there was a very clear conflict between the HRT, the Hostage Rescue Team, and the negotiators. I will give you two examples.

Once there was a 50-caliber weapon seen at the window, and the negotiators succeeded in getting David Koresh to have that weapon removed from the window. The negotiators were then criticized be-

cause the HRT said, well, if the gun is at the window, at least we know where it is.

Another time was when Koresh let some people go, and the HRT turned out the power. So instead of using the carrot, they used the stick, and there was a basic conflict inherent in the whole process which I think doomed it.

In my opinion, negotiation—and this is my summary statement—should never be used by a law enforcement authority to put someone in a position to shoot them or kill them, but only to achieve a peaceful surrender.

Would you agree with that?

Mr. FYFE. I absolutely agree. I think the job of the police is to preserve life, and they have no—catching bad guys, ending hostage situations quickly, ending barricade situations quickly, none of those things are as important as the responsibility of the police to protect life. And sometimes we forget that.

It has been pointed out here that quite often police officers and agents start to think of themselves as soldiers, and that is a real problem because in a democracy police officers should not be soldiers because soldiers have enemies.

Senator FEINSTEIN. That is right.

Mr. FYFE. The military deals with enemies in a way that our police should not regard as appropriate.

Senator FEINSTEIN. Yes, and I think this is one of the things that comes clear to me in both Ruby Ridge and Waco. Where soldierly tactics were used, they were doomed to failure. Perhaps this brings us to the subject of intelligence gathering.

I understand that two things have happened, but one of them, for the purpose of today, intelligence gathering, the FBI has now developed a Behavioral Sciences Unit, I hope operating separate, and I hope we have a chance to ask them about this, to really begin to do some behavioral assessments, because what is clear to me is that law enforcement does not have the ability to really understand fanatic religious groups and, therefore, what negotiating tactics could be effective. And I think we have to conclude that with fanatic groups they are not going to surrender unless some way they are convinced that force is not going to work, because they will probably destroy themselves first. And we have seen this in two instances.

Let me give you something on intelligence gathering, because I am really perplexed by this. Let me take you back to 1979 in my city, San Francisco, where a group called the People's Temple had been in existence for 4 years. The head of the People's Temple had actually been appointed to head the San Francisco Housing Authority. They bought substantial property in the city, major property, two big parcels. They had a huge congregation. They seemed to be doing good. They cultivated public officials, had them over for meals, interdigitated with them, in general made people feel that they were a welcome presence. And yet they were a fanatic religious cult.

I was fortunate for some reason—and I don't quite know why—that I never got involved. Then they went to Guyana. It took a Congressman in a factfinding expedition to go down there. The Congressman ended up shot to death, a reporter shot to death, and

the people drank cyanide and some were shot in the course of a mass suicide.

Well, left in San Francisco were 60 of them holed up in the People's Temple. I was very fortunate to have a brilliant young negotiator by the name of Dr. Chris Hatcher, who went in there and took months, literally working with the people full-time, to convince them to come out as opposed to committing suicide themselves. But there was no intelligence about this group ahead of time.

How does one in a system of a democracy gather the kind of intelligence that you need ahead of time to be able to deal with the group once the incident has begun to unfold?

Mr. FYFE. I would like to take a shot at that, and I think it is symptomatic of a much broader problem. That is this: police officers are used to acting on very limited information. Typically at the local level, police officers right now are responding to calls where the dispatcher has told them that there is a robbery in progress, and that is all the information they have. So the people who are at the scene know much more about the situation than the officers do.

Police officers and, to a lesser degree, Federal law enforcement agencies become excellent crisis responders, and that causes them, I think, to focus on responding to crises quickly, to size them up, and to improvise some resolutions to them. And what is lost is the whole idea of strategic planning and thinking ahead about what we can do.

As you talked, Senator, I was reminded a few years ago that when I lived here in Washington, we had a riot that involved some Hispanics, and most of my friends in the police department here were surprised to even hear that that there was a substantial Hispanic population in Washington, DC. The police department had not been looking at its clientele.

One of the most important things I think the committee can do is to encourage police agencies and Federal law enforcement agencies to constantly scan the horizon and look at who their clientele are and how they are changing. If you think of police and law enforcement officials as referees of the social order, it is very important for them to know when the social order is changing and to try and figure out how it is likely to affect them. Unfortunately, in many cases, our law enforcement officials don't do that.

If you think even on a broader level than that about the whole nature of the criminal justice enterprise, this is crime and criminal justice and disorder and religious groups, who may be fanatic, are one of the few social problems for which we have virtually no long-term strategies. You all know that we have long-term strategies for defense, and we have long-term strategies for AIDS, as well as some short-term tactics. But we really have no idea where we are going to be, where crime and the police are concerned, 10 or 12 or 15 years from now. So I think—

Senator FEINSTEIN. Let me just stop you because my question is: How do you gather intelligence on some of these groups without imposing on people, violating their constitutional rights, to know about them ahead of time, to have the background as to what kind of actions you have to take if and when there is an incident?

Mr. FYFE. I think you have to bring that right down to the level of the police officer on the beat, and the cop on the beat, I was always told, is the eyes and ears of government. And he can find out all kinds of things for you in a very nonthreatening way and building a healthy relationship with the community he or she serves. So I think we have to encourage police officers to develop that.

Cops on the beat knew a little bit about the People's Temple, or they should have known, if they had been out there with their eyes and ears open. So I think police officers are very underutilized for that purpose.

Ms. AMMERMAN. I would certainly second that. The most refreshing thing I heard in all my conversations with people at the FBI, at Quantico, in the Behavioral Science Unit, was that they told stories about how they often get calls from local people about, you know, we have discovered this strange new group up the road from us, what do we do about it? And—

Senator FEINSTEIN. But that input wasn't factored in, I gather, into some of these decisions?

Ms. AMMERMAN. What the FBI does at that point with local law enforcement is to simply say, well, go visit these folks in a very sort of nonthreatening way. It is the sort of cop-on-the-beat strategy, that the first line of defense is, in fact, for law enforcement and for the rest of us to quit being so scared of strange groups that we are afraid to knock on the front door and get to know these folks.

Senator FEINSTEIN. In other words, don't isolate them ahead of time.

Ms. AMMERMAN. Absolutely. The worst thing that happened to the People's Temple was their move to Guyana.

Senator FEINSTEIN. I think that is right, yes.

Mr. FYFE. Just as a point, Senator, the work I did in Dade County, we found an interesting thing. Dade, as you know, is the county that surrounds Miami. But we watched what police officers did while they were at work, and this is a very well trained, competent police department that was beginning its community policing enterprise. We calculated that officers in that department, the officers we watched over almost 1,000 days, initiated conversations with citizens in nonadversarial circumstances—not stopping suspicious people, but just got out of the car to talk to people once every 12 days.

So it is very difficult to learn anything about a community if you only respond to crises. You have really got to get out and have your feelers out to learn about what is going on in a place.

Senator FEINSTEIN. Thank you both very much.

The CHAIRMAN. Thank you, Senator Feinstein.

We will turn to Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I missed your statement, for which I apologize, but I do want to compliment Senator Grassley. I think he encapsulated many of the thoughts that we have talked about informally among ourselves.

The CHAIRMAN. He did a very good job.

Senator KYL. I would suggest that that framed the issues very nicely, and I have appreciated the testimony of the witnesses here.

It seems to me that this is both very simple and somewhat complex at the same time. The application of common sense and a doctrine of reasonable force seem to me to be the twin principles upon which law enforcement approaches most of these kinds of problems—reasonable force, of course, meaning never more than is reasonable. Yet it is also complicated because in order to do that in any given situation, you have to be pretty sophisticated in understanding the people and understanding how to resolve the situation.

The thing that I would like to focus on—by the way, if you have a comment on that, please share it with me, but I think that is fairly common doctrine.

The situation that seems to me to be occurring more and more, at least it is in the news more and more, is the situation that was somewhat involved at Waco and was the situation at Ruby Ridge and is in a couple of other situations, one is a fairly famous case now in Montana that I still don't think is resolved, where there has been some relatively nonserious crime alleged to have been committed for which there is some kind of a warrant outstanding or some other legal kind of action that law enforcement is attempting to process, but the people upon whom it would be processed have threatened some kind of violence. In other words, they are at the cabin saying we are armed and we really don't want you around here, so don't serve your warrant, or something bad could happen.

That is the situation that we find ourselves in more and more, and yet law enforcement has dealt with that situation over the years. It doesn't necessarily fit neatly into the three categories, and I would like Mr. Fyfe to comment on that because you have a situation where in one sense the people are very rational, they just want to be left alone, but they are also a little strange. Because of their approach to life, they have a little different view on things that may not mean that they will act totally rationally.

So my question is—and while I know it is impossible to generalize—what are the basic common principles and the typical ways in which you would suggest dealing with these crises? Not the question that Senator Simon asked, "How would you have dealt with this particular situation?" but rather, similar to that, "How would you normally deal with these?" What are the two or three best ways of dealing with these kinds of situations so that when the FBI and other agencies in the future talk with us about guidance and we talk with them about oversight, we can have a little greater appreciation of the range of options that are appropriate in these circumstances? Would both of you comment on that, please?

Mr. FYFE. I am somewhat familiar with the situation you are talking about in Montana, and I know that it is rather unique. But I think it still fits into that category of people who resist the police for some political reason and who may be totally rational but whose idea of a desirable outcome may be very different from what most of us would think would be desirable. So I think without trying to prescribe what should be done in detail, I think the principles that apply to hostage and barricade situations generally are also applicable here.

One is that you should do everything possible to avoid forcing a confrontation. Another is that time is always on the side of the offi-

cials and that you should take advantage of as much time as possible, even if it means starving people out. It seems to me that they have to leave at some time, and that the way to apprehend them is as the officers in Manhattan did, to get them to come to you rather than to go to them, because for a law enforcement official a blazing gun duel should not be a desirable outcome. For those folks in Montana, a blazing gun duel may be the desirable outcome. And law enforcement officials should do everything possible to see that they don't get that.

I know that is not an easy situation to deal with.

Ms. AMMERMAN. I think the key point that is being made here is that there are different kinds of rationalities, that what makes sense to those of us sitting in this room, what makes sense to law enforcement officials, may not make sense in the same way to a political group, to a religious group. And it is incumbent on the people who get into a situation of trying to serve a warrant, deal with a hostage or barricade situation, to understand what the rationality is that is operative for the people involved.

Mr. FYFE. It is also possible, Senator, to even think about this in cost/benefit terms. One of the things that causes police officers and law enforcement officials to try and produce quick resolutions to situations is the whole idea of expediency and time. And if you think about how that has operated, here we are 2½, 3 years after Waco still talking about it; lots of time and effort is being spent on that.

I think in my own city of Philadelphia of the MOVE incident in 1985, where the police bombed a building. That city is still tied up in litigation. It has had to reconstruct a whole neighborhood. It has two police officers assigned to a home that the MOVE people think they still own. So just in cost/benefit terms, it is a good idea to take as much time before a confrontation as to force a confrontation and live with the consequences.

Senator KYL. One of the things I think we are going to have to deal with in our society is something that has been with us in this country since its inception; in fact, it was one of the reasons for the inception of this country, but it also has increased in importance, perhaps, in the last few years, and that is this whole notion of people who predict that Government will come to get them and then do things which fulfill that prediction. How does law enforcement deal in advance with groups whose biggest fear is the Government and who thrive on the predictions that the Government is against them and will come for them, particularly given the fact that these same groups often tend to defend themselves with significant weaponry?

Mr. FYFE. I think what the police have to do in those situations, although I don't like to think of the police as soldiers, is tantamount to what the military does, that is, to try and structure confrontations so that resistance is almost impossible. Police officers on the street do that all the time. They try and get the drop on people so that the individual involved knows that he has no choice but to surrender.

I think that if there is a need to confront groups like that, the confrontation should be structured in the same way. You try and

get people when they are alone, when they are unarmed, and where they can't give you reason to kill them.

Ms. AMMERMAN. I think another part of the psychology here, before the tactics, in some sense, is that it is awfully easy when there is a group out there that proclaims that you are a terrible person and the enemy, to take their word for it and, in fact, develop a kind of barricade mentality yourself, to turn inward and see that person who is proclaiming that you are a terrible person and an enemy as, in fact, your enemy. So that there is a kind of self-fulfilling prophecy that often gets put in place when we have these confrontations with groups that try to paint the law enforcement and the Government as their enemies. We often begin to then act like exactly what they are portraying us as acting.

It is a very difficult cycle to break, and some of the kinds of strategies that Mr. Fyfe I think has been talking about are important in helping to break that cycle.

Senator KYL. I appreciate that. I think that we are going to have to do more in working with our national law enforcement agencies and, of course, to assist them in working with local groups to deal with the increasing number of disaffected groups in our country, particularly out West. I see them in my State of Arizona, people who are, one might say, psychologically, anyway, somewhat paranoid about the Government. And somehow we are going to have to prevent the kinds of things which one can foresee in the future as this paranoia increases. I am not sure what the answers to those issues are, but I suspect that much of it is involved in the kind of thing you talked about, Mr. Fyfe, of simply having the law enforcement people establish some degree of communication with these folks to let them know that at least from their perspective they don't have to worry about the Government being their enemy.

Mr. FYFE. Yes, I hear on the local level of individual police officers, situations in which police officers have killed people and then said it was an example of suicide by cop. More often than not, when you look carefully at those situations, you see that they involved confrontations with emotionally disturbed people that were really forced by police officers who then had to shoot their way out of it.

I think on a collective level we may see the same thing with these religious groups, and the trick in dealing both with the emotionally disturbed person and the cult that seems crazy to us is to avoid forcing a confrontation.

Senator KYL. Just so I will not be misunderstood, the groups that I am mostly talking about would be described in the media generally as militia-type of groups. But I don't really like to use that word so much, but they are not religious. They are simply people who fear the Government is going to take their guns away or attack their property and so on. And it is for that reason that they fear the Government and act in a rather paranoid way.

I appreciate your comments very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Feingold, you will be our concluding questioner.

Senator FEINGOLD. Mr. Chairman, I know this panel has been up for a long time, so I will ask that my statement be included in the record.

The CHAIRMAN. We will put it in the record.

Senator FEINGOLD. I will just ask a few questions.

Ms. Ammerman, I have appreciated your comments about the different kinds of sources that might be available to help law enforcement in situations like this. You mentioned that at Baylor there were people who actually were familiar, on a personal basis, with the Branch Davidians. Can you just tell me a little bit more about the more general sources that might be available to help in this type of situation? And how are law enforcement people to work with two potentially different kinds of information, the specific and the general?

Ms. AMMERMAN. One of the things that has been very encouraging in the days since Waco is that there do seem to have been moves at the Justice Department and with the FBI to set up something of a crisis management team. And that crisis management team does not seem to be seeking out the help of scholars in the field of religion to help brief them and get them some available general knowledge about the way in which they should think about the kind of strategic planning that we have been talking about. What are the general things we know about dissident religious groups that can help us to have a kind of orientation toward a situation? But those very same scholars can then be network contacts to help put law enforcement in touch with people who might have very specific knowledge about a given group—in this case, Professor Pitts, for instance, at Baylor, who knew the Branch Davidians very well.

However, it is certainly the case that there are a whole lot more religious and political groups out there than there are scholars who have studied every single specific one of them. So that this more general knowledge of the kinds of predictable patterns of behavior that we have seen by studying lots of different groups can often be very helpful, even if it is not specific to the exact group that we are dealing with.

Senator FEINGOLD. Could you mention just a couple of other institutions where this kind of work is being done? Maybe you already have.

Ms. AMMERMAN. There is work being done at every place from the University of Nevada to Virginia Commonwealth University to independent scholars, to people at Loyola University, New Orleans. There are institutions all over the country, and my report to the Justice and Treasury Departments, among other things, listed about 20 scholars who are seen in the field of social science, study of religion, as the people who know new religious movements, high-intensity religious movements.

Senator FEINGOLD. Would you say that many of the factors that had to be considered at Waco including the volume of weapons and explosives, the allegations of child abuse and instances of violence in the past, are generally consistent with the religious groups that you have studied?

Ms. AMMERMAN. The allegations are certainly consistent, and that is one of the interesting things to be looked at here; that there

is a very consistent pattern in the relationship between a dissident religious group and the larger society surrounding it. Once that group is defined by some group within the larger society as somehow dangerous, the pattern of allegations is a very familiar one. And those allegations may or may not ever hold up once people actually go and look at the group.

We can look at this pattern going all the way back into the 19th century. The way people described what was going on inside convents sounds an awful lot like what we hear people describing going on inside the Branch Davidians, or what people thought, as was referred to earlier, about what was going on with the Mormons in their early history.

I think it is very important for us both to take those allegations seriously in the sense of actually investigating them, but also to realize that there is this predictable pattern once a group has decided that they want to live very differently and see the rest of us as wrong, that we are also likely to respond with a variety of kinds of fears and expectations and exaggerations.

Senator FEINGOLD. I think the perception issue is very, very important, and there is a question of fairness there. But I want to pursue that a bit because you have held forth this notion of dissident religions. I will do, obviously, whatever I can to protect minority or dissident religions, but at some point there has to be a distinction between dissidence and criminal activity, particularly violent criminal activity.

At what point does not the perception, but the reality of a group's activities sort of trump the ideology? Or really more importantly for our hearing, how do law enforcement people make that kind of determination that this isn't just a series of perceptions that are directed toward a particular group but are really, in fact, a very dangerous situation?

Ms. AMMERMAN. Well, that requires very careful data gathering on the group, the kind of good police work that Mr. Fyfe has been talking about, finding out whether, in fact, this is a group that not only owns a lot of weapons but, in fact, talks about using those weapons against somebody other than the rabbits on the range, or whatever, which I think in the case of the Davidians, if people had listened carefully to their rhetoric with an ear toward an understanding of religious apocalyptic language would probably not have been worried about them using these weapons against their neighbors.

But it is that kind of very careful intelligence gathering in the very specific situations that is necessary here to find out whether we are dealing with a real threat or one that is merely perceived by neighbors who have been maligned by the group.

Senator FEINGOLD. As a final question, let me just follow up on that a bit. In response to Senator DeWine, you noted that there was no reason for the Davidians to "start killing each other off." But that contradicts the widely held notion that the Davidians were preparing for the Apocalypse or the end of the world. Reports did indicate that suicide, in some opinions, was a distinct possibility. However, apparently, the experts could not decide on the potential for suicide.

What further guidance do you have for situations where the experts cannot agree?

Ms. AMMERMAN. I think that is the one issue that there is a real division of opinion on within the scholarly community about the nature of the end, whether, in fact, the Davidians committed mass suicide, and how much of it was mass suicide and how much of it was assisted by others within the group.

The situation, however, is not one where you had people who were killing each other off somehow out of any sort of self-interest in the usual sense of that word, but rather people who were collectively engaged in what they saw, if it was a mass suicide, as a kind of mass martyrdom and movement into another world that would be for them a better world. So that even something as horrible as a parent killing a child, which I want to be very clear I understand to be a very horrible thing that I would not want to see happen, but that is somehow understandable within a world view in which that death results in a kind of rebirth.

Senator FEINGOLD. Thank you. I thank the Chair.

[The prepared statement of Senator Feingold follows:]

PREPARED STATEMENT OF SENATOR RUSSELL D. FEINGOLD

Since April of 1993, the tragic events at Waco, TX have continued to shock and trouble many Americans. Today we gather for hearings, which I hope will provide this body, and the American public, with a clearer picture of the events that transpired in Texas and what steps must be taken to avoid such a result reoccurring.

There is no question that Federal law enforcement made mistakes at Waco. The failure to adequately collect and utilize intelligence available to the ATF lead to a plan, in large measure, based upon incomplete or inaccurate information. Following the initial raid, the situation was further aggravated by the failure of the FBI to reconcile the tension between the negotiators and the tactical operations, thus limiting the possibility of a negotiated end to the siege. These are but two examples of mistakes which appear to have been made at Waco.

This institution, as representatives of the people, has an obligation to review and address these and other mistakes which occurred. To their credit, the agencies involved are working to address the problems which plagued the standoff. Through these types of hearings—hearings focused on learning from these mistakes—we have an opportunity and, in fact, an obligation to ensure that the necessary corrective steps are taken by Federal law enforcement.

The role of law enforcement in a free society is an important one. The men and women of law enforcement, be they local, State or Federal, hold a unique trust with the American people. However, along with that special trust, comes an enormous responsibility. When the actions of law enforcement place that special trust at risk, it is imperative to correct those mistakes. To do otherwise is to undermine the premise that the primary responsibility of law enforcement is to protect and serve the people of this Nation.

However, Mr. Chairman, just as we are right to criticize the conduct of law enforcement when the facts warrant doing so, we should not misconstrue the mistakes made at Waco as evidence of some broader, cladenstine assault on the general public. The men and women of American law enforcement work hard each day, at enormous personal risk, to protect the citizens of this Nation. We would do well to recall that four Federal agents were killed while acting in their official duties, attempting to execute a warrant. In our democratic society, the validity of warrant should be determined in a court of law—not a gun battle.

Recent events in Arizona and Oklahoma City further point out, all too tragically, the flawed and often catastrophic result of abandoning the rule of law. The answers to the mistakes of Waco do not lie in allowing a small group of angry and misguided individuals to use them as pretext for terrorizing and killing innocent men, women and children. The greatness of this Nation stems from our adherence to the Constitution and the fundamental principle that grievances should be redressed in a court of law. If we continue to abandon this principle, ultimately we too shall forfeit the possibility of remaining a civil and just society.

Mr. Chairman, it is my sincere hope that these hearings will result in constructive and necessary improvements in Federal law enforcement. Over two years later the legacy of Waco remains, and ultimately the question will be how do we respond. If the members of this committee agree on nothing else here today, we must be unanimous in our agreement to do all within our power to avoid another such tragedy in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. We want to thank both of you witnesses. You have been excellent. We have learned a lot from you, and we appreciate the efforts you have put forth. We are trying to establish here some things that need to be changed and things that are being changed, and we hope that this committee will make that clear to everybody, that there are some massive changes going on that will be in the best interests of the country and the best interest of our people. And both of you have added a great deal to this hearing, so we appreciate your both being here.

Senator BIDEN. Mr. Chairman, if you will permit me, I want to thank the witnesses as well, and, Dr. Fyfe, I look forward to seeing that material from—is it Dade County?

Mr. FYFE. Dade County.

Senator BIDEN. Dade County, and I also look forward, Professor Ammerman, if you would, at least, if not now, not in a letter, but in a telephone conversation, expound a little more with me on how operationally you would think this works. OK?

The CHAIRMAN. Could I just also make a request? I would like to read a number of your papers that you have written, Dr. Ammerman, both on the religious topic—as you know, I am the author of the Religious Freedom Restoration Act, along with others, and so I am very interested in that area, plus anything you can on Waco. And I would like to—I wouldn't mind having these autographed, by the way, and I wouldn't mind having at least your one book there, if you would.

Mr. FYFE. Certainly, Senator.

The CHAIRMAN. Thanks so much. We appreciate having you here.

Senator BIDEN. Under the new ethics rules, we will probably have to pay for the book, but—

The CHAIRMAN. I am not going to—I am going to learn from it. [Laughter.]

We are certainly going to accommodate our distinguished ranking member, so our next panel of the day is comprised of two individuals who put forth a lot of time and effort in reviewing the actions of ATF, not only its actions but its agents and agency as they related to the events surrounding the failed warrant execution at Waco on February 28, 1993.

Mr. Geoffrey Moulton was the project director for Treasury's Waco review. He had the task of organizing an intensive investigation of this event. In addition to his general oversight responsibilities, Mr. Moulton was intimately involved in the writing, editing, and the reviewing of the report.

Joining Mr. Moulton is Capt. John Kolman. Before he retired, Capt. John Kolman served 23 years in the Los Angeles County Sheriff's Department, 3 years in the Whittier Police Department, and 3 years active Army duty, which included service in Korea. Captain Kolman was consulted by the review for his expertise and tactical operations, and as a consultant, he provided the review

with an independent assessment of ATF's operation from his point of expertise.

We are delighted to have both of you here. We look forward to your testimony, and we will begin with you first, Mr. Moulton, and then we will move to Mr. Kolman.

Senator BIDEN. Mr. Chairman, before Professor Moulton begins, I want to make sure that I don't get accused of any conflict of interest. Mr. Moulton teaches at Widener University Law School on the Delaware campus. I am an adjunct professor on that law school campus. I would like the record to show that we have not collaborated, and I welcome you here. It is nice to have you here, and thank you for your good work.

PANEL CONSISTING OF H. GEOFFREY MOULTON, JR., ASSOCIATE PROFESSOR, WIDENER UNIVERSITY SCHOOL OF LAW, WILMINGTON, DE; AND JOHN A. KOLMAN, CAPTAIN (RETIRED), LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, WHITTIER, CA

STATEMENT OF H. GEOFFREY MOULTON, JR.

Mr. MOULTON. Thank you, Senator Biden, and thank you, Mr. Chairman. Members of the committee, thank you for giving me the opportunity to appear before you today.

As Senator Hatch stated, 2 years ago I served as the project director for the Treasury Department investigation into ATF's failed raid on the Branch Davidian compound near Waco, TX. Just briefly by way of background, because I don't want to represent myself to be more of an expert than I am, before I undertook that assignment, I graduated from Columbia Law School in 1984, and on the conflict-of-interest score, I was a classmate with Senator Hatch's son, Brent, so we will get that on the table.

The CHAIRMAN. I know how radical that class was. [Laughter.]

Mr. MOULTON. That is right.

I clerked then for Chief Judge Feinberg on the Second Circuit Court of Appeals and then for Justice Rehnquist on the United States Supreme Court. After that, I served for roughly 4 years as an assistant United States attorney in Philadelphia. In the middle of those 4 years, I spent 6 months on a temporary detail to the Justice Department under Attorney General Meese and Attorney General Thornburgh as special counsel to the Assistant Attorney General in charge of the Criminal Division. I then spent several years in private practice before undertaking the assignment as project director. Today, as Senator Biden said, I am an associate professor at Widener Law School in Delaware, where I teach white-collar crime, legal ethics, and criminal procedures, and I have the good fortune to have Senator Biden as a colleague.

I have submitted a written statement for the record. I would like to just make a few—

The CHAIRMAN. Without objection, we will put your complete statements in the record, and we do appreciate if you can summarize.

Mr. MOULTON. Thank you, and I will briefly make a few comments now.

As we all know, on February 28, 1993, four agents from the Treasury Department's Bureau of Alcohol, Tobacco and Firearms were killed and more than 20 were wounded as they unsuccessfully attempted to serve lawful search and arrest warrants at the Branch Davidian compound near Waco, TX. Several residents of the compound died that day as well.

The ensuing standoff, again, as we all know, ended 51 days later on April 19 when the compound erupted in fire that destroyed the compound. More than 70 residents died.

On the day of that tragic fire, President Clinton directed the Treasury and Justice Departments to conduct vigorous and thorough investigations of events leading to the loss of law enforcement and civilian lives. Secretary Bentsen created a unique review structure that, I believe, was very effective, and I just want to spend a minute describing that.

He asked Ron Noble, who by then had been designated to be the Assistant Secretary of Treasury for Enforcement, to lead Treasury's review of ATF's involvement in the case, from the beginning of its investigation of Koresh through the unsuccessful effort to execute search and arrest warrants. To ensure that that report was both comprehensive and impartial, the Secretary enlisted the help of three individuals of national prominence and integrity: Watergate prosecutor Henry Ruth, Pulitzer Prize-winning journalist Edwin Guthman, and Los Angeles Police Chief Willie Williams. Their role was to provide guidance to the investigation, to consider its findings, and to assess the final report.

In addition to those independent reviewers selected by Secretary Bentsen, the Treasury's Office of Inspector General monitored the review team, and perhaps most importantly, we consulted 10 non-Treasury experts in tactical operations, firearms, and explosives. One of those tactical experts, as Senator Hatch said, was John Kolman, who is sitting here with me this morning—becoming this afternoon. The independent analysis of each of those experts was appended to our report.

I understand from the agenda for today that you are particularly interested in looking at the effectiveness of ATF's intelligence gathering and processing in connection with this investigation of David Koresh and his followers. That is a subject that the Treasury review thoroughly investigated 2 years ago and which we addressed in our report. I would like briefly to highlight for the committee the review's findings with respect to that subject. But before I do, I would like to say just a few words about some of the other findings in our report, some of which have been touched on and some of which may or may not be touched on.

First, I want to emphasize one thing that we learned that I hope is not lost in these hearings, and that is that the rank-and-file agents of ATF who were sent to enforce Federal firearms laws at the Branch Davidian compound did their very best to perform their assigned tasks under extremely difficult circumstances. Many of those line agents, some of whom we will hear from later today, demonstrated what was often spectacular courage in the face of extraordinary gunfire. As the committee considers today the failures of Waco, I hope it remembers the individual acts of dedication and bravery and courage that occurred as well.

In addition, before getting to the intelligence function, the review concluded that ATF properly initiated the investigation of David Koresh and his followers after receiving complaints from the local law enforcement officials. We found no support for allegations that were prominent at the time that ATF targeted Koresh because of his religious beliefs. To the contrary, in light of the information presented by local authorities, it would have been irresponsible, we concluded, for ATF not to have initiated an investigation.

We also addressed the question whether ATF had probable cause to believe that people inside the compound possessed and were manufacturing illegal machine guns and explosive devices. There has been talk today about the fourth amendment and the question of whether they behaved appropriately, ATF behaved appropriately in executing, attempting to execute the warrant. We learned and laid out in detail in our report how ATF agents painstakingly traced the paper trail of transactions involving firearms, firearms parts, and chemicals, how they interviewed local law enforcement officials, neighbors, and former residents of the compound.

By late February 1993, ATF had amassed an impressive amount of evidence that Koresh was unlawfully possessing and manufacturing machine guns and explosive devices, more than enough to justify the issuance of search and arrest warrants. Unfortunately, the review also found serious problems once ATF turned from developing probable cause to deciding how best to use that information. The development of the raid plan and the implementation of that plan were marred by disturbing evidence of flawed decision-making, inadequate intelligence gathering, miscommunication, and serious supervisory failures. We also discovered and addressed what we concluded were deliberately misleading statements after the raid about the raid by certain ATF supervisors.

I will combine the rest of my remarks just for another minute or two on the subject of the flaws in the intelligence gathering and processing aspects of ATF's investigation.

With the help of our tactical experts, including John Kolman, the review concluded that ATF's intelligence operation was deeply flawed in several critical respects. The intelligence failures identified in our report related both to the planning of the February 28 raid and to the execution of the raid itself.

Those failures could have been avoided, we concluded, had there been a separate, centrally managed intelligence structure designed to collect, analyze, and disseminate intelligence information. Even though ATF's National Response Plan called for an intelligence coordinator and an agent was, indeed, assigned to that role, that agent was given virtually no intelligence responsibilities and had none on the day of the raid. Instead, the dissemination and analysis of intelligence information was often a hit-or-miss proposition, with those best suited to evaluate the information either never receiving it at all or being too bogged down with other duties to appreciate its significance.

ATF's intelligence efforts did uncover a great deal of information that was relevant to the planning of an enforcement action directed against Koresh and against evidence of firearms and weapons violations at the compound. Unfortunately, there again was no effective system in place to coordinate, analyze, and follow up on that

information. As a result, the tactical planners developed their enforcement approach based on information that was too often inadequate, inaccurate, or misunderstood.

I see my time is up. I will save for response to questions specific items of intelligence failures that led to both the development of a raid plan that was flawed and a flawed decision to go forward with the raid. Suffice it to say that serious weaknesses in ATF's intelligence gathering and analysis contributed to the tragic results on February 28. Fortunately, it is my understanding that ATF has made substantial changes both in terms of structure and in training that directly address those intelligence failures.

Thank you again, Mr. Chairman, for giving me the opportunity to make this statement.

[The prepared statement of Mr. Moulton follows:]

PREPARED STATEMENT OF H. GEOFFREY MOULTON, JR.

Thank you to the Chairmen and the Committee for giving me the opportunity to appear before you today. My name is Geoff Moulton, and two years ago I served as the project director for the Treasury Department investigation into ATF's failed raid on the Branch Davidian Compound near Waco, Texas. Before undertaking that assignment, I graduated from Columbia Law School in 1984, clerked for Chief Judge Wilfred Feinberg in the United States Court of Appeals for the Second Circuit, and then for Justice Rehnquist on the United States Supreme Court. After finishing my clerkship with Justice Rehnquist, I served roughly four years as an Assistant United States Attorney in the Eastern District of Pennsylvania. In the middle of those four years, I spent six months on a temporary detail to the Justice Department, serving as Special Counsel to the Assistant Attorney General for the Criminal Division. After I left the government, I worked in private practice for two-and-one-half years. I am now an associate professor at Widener University School of Law School in Delaware, where I teach criminal procedure, white collar crime, and legal ethics.

As we all know, on February 28, 1993, four agents from the Treasury Department's Bureau of Alcohol, Tobacco and Firearms were killed, and more than twenty were wounded, as they unsuccessfully attempted to execute lawful search and arrest warrants at the Branch Davidian Compound near Waco, Texas. Several residents of the Compound were killed in the raid as well.

Even before the fire 51 days later, the Executive Branch, Congress, the media and the general public raised serious and important questions about ATF actions at the Compound, and about ATF's inconsistent post-raid statements about what had actually happened. Clearly, there needed to be a comprehensive review of the events of February 28, and of the process that lead up to the raid. The Treasury Department began planning for such a review during the 51-day stand-off that followed the failed raid. The standoff was handled on the law enforcement side by the FBI, which was invited to and did take over at the scene the day after the raid. The standoff ended on April 19, when the Compound erupted in fire set by residents after the FBI used tear gas to attempt to force the occupants to leave. The fire destroyed the Compound, and more than 70 residents died.

On April 19, President Clinton directed the Treasury and Justice Departments, which are responsible for ATF and the FBI, respectively, to conduct "vigorous and thorough" investigations of the events leading to the loss of law enforcement and civilian lives near Waco. Secretary Bentsen created a unique review structure that, I believe, was very effective. He asked Ronald K. Noble, who by then had been designated to be Assistant Secretary of the Treasury for Enforcement, to lead Treasury's review of ATF's involvement in the case, from the beginning of its investigation of Koresh through the unsuccessful effort to execute search and arrest warrants. To ensure that the report was impartial and comprehensive, the Secretary enlisted three individuals of national prominence and integrity—Watergate prosecutor Henry Ruth, Pulitzer Prize winning journalist Edwin Guthman, and Los Angeles Police Chief Willie Williams—to provide guidance to the investigation, consider its findings, and assess the final report.

Mr. Noble asked me to serve as the project director for the Review. As project director, I was responsible for assembling the seventeen senior investigators from the Secret Service, the Customs Service, the IRS, and the Financial Crimes Enforcement Network, as well as six other attorneys, to assist in the investigation and the preparation of the report. Along with two assistant project directors—Lewis C.

Merletti, then Deputy Assistant Director of the U.S. Secret Service, and David L. Douglass, an attorney on leave from the law firm of Wiley, Rein and Fielding—I was responsible for directing and overseeing the investigation, supervising the Review's day-to-day operations, and coordinating and participating in the drafting and editing of the report.

In addition to the independent reviewers selected by Secretary Bentsen, Treasury's Office of Inspector General monitored the review team to provide assurance to the Department that the project plan was complete and properly implemented, and that all relevant facts were fully considered. We also consulted with ten non-Treasury experts in tactical operations, firearms and explosives. The independent analysis that each one of them submitted to the review team is appended to the report. These outside experts, like the three independent reviewers, served without pay.

Our mission from the beginning was to conduct a thorough, comprehensive and impartial review. First and foremost, our goal was to learn what happened near Waco, and then to relate the facts. We reviewed primary source material and interviewed over 500 individuals in the four-and-one-half months between May 17 and the submission of the report on September 30, 1993. The vast majority of those interviews were conducted in person, and many lasted a full day or more. As the review progressed and new facts emerged, we conducted countless follow-up interviews. Based on this investigation, including credibility determinations and circumstantial evidence, we made factual determinations and analyzed those facts. We took a hard, critical look at all the evidence, and produced a thorough, detailed and candid report.

What did we learn? I want to emphasize one thing we learned that I fear may be lost in these hearings—that the rank and file agents of ATF who were sent to enforce federal firearms and explosives law at the Branch Davidian Compound did their best to perform their assigned tasks and showed dedication and often spectacular courage in the face of extraordinary gunfire. Unfortunately, the Review also found disturbing evidence of flawed decisionmaking, inadequate intelligence gathering, miscommunication, supervisory failures, and deliberately misleading post-raid statements about the raid and the raid plan by certain ATF supervisors. Upon publication of our report, five ATF employees were placed on administrative leave. Soon thereafter, the position of ATF Director was filled by John Magaw, former director of the Secret Service, and other senior ATF managers were replaced.

I understand from the agenda for today you are particularly interested in examining the effectiveness of ATF's intelligence gathering and processing in connection with its investigation of David Koresh and his followers. That is a subject that the Treasury Review thoroughly investigated two years ago, and which we addressed in our report. I would like briefly to highlight for the Committee the Review's findings with respect to that subject.

INTELLIGENCE GATHERING AND PROCESSING

With the help of our tactical experts, including John Kolman who is testifying today, the Review concluded that ATF's intelligence operation was deeply flawed in several critical respects. The intelligence failures identified in our report related both to the planning of the February 28 raid and to the execution of the raid itself.

To be successful, an intelligence operation must be able to develop adequate and reliable information, disseminate that information to the relevant decisionmakers, and ensure that those decisionmakers recognize the meaning and limitations of that information. ATF's intelligence efforts in this matter failed in all three areas. Those failures could have been avoided, we concluded, had there been a separate, centrally managed intelligence structure designed to collect, analyze and disseminate intelligence information. Even though ATF's National Response Plan called for an intelligence coordinator, and an agent was assigned to that role, that agent was given virtually no intelligence coordinating responsibilities, and had none on the day of the raid. Instead, the dissemination and analysis of intelligence information was often a hit or miss proposition, with those best suited to evaluate the information either never receiving it at all or being too busy with other duties to appreciate its significance.

ATF's intelligence efforts uncovered a great deal of information that was relevant to the planning of an enforcement option directed against Koresh and evidence of firearms and weapons violations at the Branch Davidian compound. Unfortunately, no effective system was in place to coordinate, analyze and follow up on that information. As a result, the tactical planners developed their enforcement approach based on inadequate, inaccurate and misunderstood information.

For example, one fundamental decision confronted by ATF's tactical planners was the manner of serving the anticipated search and arrest warrants. Those planners reasonably believed that arresting Koresh away from the compound might reduce the risks of any subsequent law enforcement action. Unfortunately, those planners mistakenly believed that Koresh never left the compound, principally because of intelligence production and dissemination breakdowns related to the undercover house. ATF failed to provide the agents in the undercover house adequate technical support, a comprehensive idea of what information the raid planners needed, or the kind of supervision and feedback necessary to ensure that they performed their mission. As a result, the raid planners misunderstood both the nature and certainty of intelligence concerning Koresh's movements, and therefore devoted insufficient effort to developing a plan to lure him away from the compound.

Similarly, the Review catalogued other intelligence-system flaws, both at the undercover house and elsewhere, that seriously compromised the raid-planning process. The raid planners mistakenly believed that Koresh kept all the weapons under lock and key in a room adjacent to this own, and planned accordingly. They mistakenly believed that all or almost all of the men living at the Compound would be out working in a construction area away from the "arms room" at 10:00 a.m. the day of the raid. And they mistakenly believed that the women in the compound would be unarmed. As a result the raid was planned for 10:00 a.m. rather than the more traditional pre-dawn time period.

In addition, the intelligence-gathering effort failed by leaving potentially important resources untapped. For example, ATF failed to consult with psychologists and other experts who were better equipped than the agents to account for the actions and belief systems of Koresh and his followers. Information from such experts might have been instrumental in selecting the best enforcement option.

On the day of the raid itself, a series of intelligence gathering and processing failures led to significant information being ignored or underestimated—information that, properly understood, might have caused the raid to be called off. Here again, these failures resulted chiefly from the lack of a coherent structure designed to make sure that all relevant information was properly handled. The operation commanders placed themselves in positions where receipt of developing information was difficult and calm assessment of that information was virtually impossible. The undercover agent was debriefed by telephone without the benefit of a control agent, making it difficult to process the raw intelligence he was providing. And critical information about pre-raid activity around the compound—particularly concerning media contact with a compound resident—was never properly evaluated or linked with other available information.

In short, serious weaknesses in ATF's intelligence gathering and analysis contributed to the disastrous results on February 28.

OTHER FINDINGS

Before concluding this statement, I want to outline briefly the Treasury Review's other significant findings, which may or may not be addressed in these hearings.

Did ATF properly initiate an investigation of Koresh and his followers?

The answer we gave in the report and the answer that remains correct is yes. Based on evidence that is set out in the report, we concluded that ATF properly focused on Koresh after receiving complaints from local law enforcement officials—the McLennan County Sheriff's Department—in May 1992. We reviewed allegations that ATF targeted Koresh because of his religious beliefs and sexual conduct with minors. We found no support whatsoever for those allegations. Before opening a formal investigative file, the ATF case agent made a preliminary determination, by debriefing local officials, interviewing gun dealers, and searching national firearms registries, that federal crimes might be being committed. He then opened a file, and conducted a thorough, professional investigation to develop probable cause that illegal machine guns and explosive devices were being produced and possessed at the Compound. In light of the information presented by local authorities, it would have been irresponsible for ATF not to have initiated an investigation.

Did ATF have probable cause to believe that people inside the Compound were manufacturing illegal machine guns and explosive devices?

The answer we gave in the report was the same as the one given by the judge who reviewed and approved the warrant, Magistrate-Judge Green—yes. The evidence that ATF presented in support of the warrant application plainly showed that there was probable cause to believe that Koresh and his followers were committing numerous violations of federal firearms laws. ATF agents painstakingly traced the paper trail of transactions involving firearms, firearms parts, and chemicals, and

interviewed local law enforcement officials, neighbors, and former residents of the Compound.

By late February 1993, the case agent, Davy Aguilera, had amassed an impressive amount of evidence that Koresh was unlawfully possessing and manufacturing machineguns and explosive devices. At the beginning, Aguilera knew that Koresh was receiving shipments of M-16 parts and materials used to make explosives, along with other firearms materials. Because neither Koresh nor any of his known followers were registered owners of any M-16 machine guns, or of any machineguns at all, the agent could reasonably infer that Koresh was purchasing M-16 parts to convert AR-15 semiautomatic rifles into illegal machineguns, over a fairly substantial period of time. That inference was strengthened when the agent learned that another firearms dealer, Henry McMahon, had sold about 90 AR-15 lower receivers to Koresh, and that McMahon tried unsuccessfully to conceal the bulk of those sales and then mislead Aguilera about the identity of the purchaser. Aguilera also learned that Koresh had purchased AR-15s and AR-15 upper receivers from several other sources. Once he had the AR-15 receivers and the M-16 parts, Koresh needed only a metal lathe and milling machine to make a substantial quantity of machine guns. Reports from several sources made it clear that Koresh possessed both machines at the Compound, and that he had experienced operators, including a mechanical engineer, who were designing and manufacturing fully automatic weapons for Koresh.

In addition, ATF had reason to fear that Koresh posed a danger not only to his followers but also to the surrounding community. Aguilera learned Koresh had a propensity toward violence and intimidation. Koresh's control of the Compound originated with a gunfight, which was ended by armed deputies. He used threatening rhetoric and preached an apocalyptic theology, backed up by an arsenal of weapons and an extraordinary control over his followers. ATF reasonably believed that Koresh was far more threatening than a lone individual who had a liking for illegal weapons. It would have been irresponsible for ATF not to have pursued Koresh once Aguilera's investigation showed there was probable cause to do so.

That this evidence established probable cause that Koresh was violating the firearms laws was corroborated by ATF firearms and explosives experts, and by interviews of neighbors and former Compound residents. I think it is important to remember that "probable cause" is not the same as "beyond a reasonable doubt." The leading Supreme Court case on the subject, *Illinois v. Gates*, 462 U.S. 213 (1983), describes probable cause as a "fair probability" or "substantial chance." So the question here is whether the evidence obtained by ATF created a "fair probability" or "substantial chance" that there would be evidence of firearms violations at the Compound. That standard was not only met but exceeded.

The Treasury Review further confirmed the existence of probable cause by consulting two non-Treasury weapons experts and two non-Treasury explosives experts. The weapons experts, William Davis, Jr., and Charles Fagg, confirmed that Aguilera and Judge Green had ample evidence to support searching the Compound for evidence of the manufacture of illegal machine guns. The explosives experts we consulted, Paul Cooper and Joseph Kennedy, concluded that the evidence gathered by ATF established probable cause to believe that illegal explosives were being manufactured. All four of their reports were included in the Appendix to the Treasury Report published in September 1993. I should add that Aguilera's conclusion was further confirmed when, in March 1993, a former Compound resident told the Texas Rangers that he had milled AR-15s at the Compound so that they could be fired automatically, and when, after the April 19 fire, 48 illegal machines and evidence of illegal explosive devices were recovered from the Compound.

I would like to make one final point about the probable cause issue before moving on. None of the lawyers for the eleven Branch Davidians who were charged with weapons offenses and conspiracy to murder federal agents ever challenged the validity of the search warrant. And several of their clients were convicted of the very offenses that Aguilera referenced in his warrant. In this country, the proper way to challenge the validity of a warrant is in court, not by shooting at the people who are attempting to serve it. The warrant here was carefully reviewed by the U.S. Attorney's Office, duly authorized by a neutral and detached magistrate, and properly issued. I am confident that had it been challenged in court, the trial court, the Court of Appeals and the U.S. Supreme Court all would have upheld its validity.

Did ATF mislead the military in its effort to obtain military assistance?

The Treasury Report describes the support received by ATF from the active military as well as the Texas National Guard. This support included the provision of training facilities and equipment, aerial reconnaissance missions, the use of helicopters during the raid, and advice concerning ATF's medical and communications plans. The principal military support issue that we addressed was whether ATF

misled the military about the existence of a "drug nexus" in order to obtain "non-reimbursable" support, that is, support provided by the military free of charge.

In order to answer that question, we interviewed the critical personnel at ATF, the Texas National Guard, and the Department of Defense. We also reviewed the written communications between ATF and those other two entities. What we found, and what the report states, is the following. In November 1992, ATF approached the U.S. military and the Texas National Guard for support. In early December, a Department of Defense representative briefed ATF officials about military support available for the Branch Davidian investigation and possible execution of search warrants. During this briefing, the Department of Defense representative told ATF that it could obtain military assistance without having to reimburse the Defense Department if the investigation was related to narcotics enforcement, that is, had a "drug nexus." Soon thereafter, an ATF agent then met with officials of the Texas National Guard to determine what assistance that entity could provide. During that meeting, the Guard and representatives of the State of Texas repeated that ATF could get "nonreimbursable" (free) support if the case had a drug nexus.

Following these meetings, ATF agents investigated whether there was any drug activity at the Compound. The case agent, Aguilera, had information from a former member that parts of an illegal methamphetamine lab had been at the Compound when Koresh took control in 1988, and that the local sheriff's department had planned to collect this equipment. Aguilera then learned from the sheriff's department that it had no records indicating that these parts had been collected by or turned over to the sheriff. In addition, an ATF agent acting in an undercover capacity reported that Koresh had told him that the Compound would be a great place for a methamphetamine lab because of its location. Furthermore, a criminal records check and information from informants suggested that one Compound resident had a prior conviction for possession of amphetamines and a controlled substance, and that several other individuals associated with the Compound had been identified as perhaps having some involvement in illegal narcotics activity.

After this information was gathered, ATF accurately provided it to the Texas National Guard and representatives of the U.S. military. In particular, on February 4, 1993, ATF officials met with representatives of both groups and accurately informed them of the results of ATF's investigation into the existence of a drug nexus. The information was not fabricated, nor was it exaggerated. All of the military entities concerned indicated that they were satisfied that a sufficient drug nexus existed to justify nonreimbursable military assistance. Moreover, most of the military support that was provided to ATF in this matter could have been obtained, on a reimbursable basis, even had there been no drug nexus.

In short, after thoroughly investigating the facts, the Treasury Review concluded that ATF did not mislead U.S. military or Texas National Guard officials in obtaining their assistance on a nonreimbursable basis. That is not to say that ATF had developed probable cause to believe there were narcotics offenses taking place at the Compound. They had not. But here probable cause was not the relevant standard. As our report pointed out, neither the laws, nor the regulations and manuals of the military entities, provided a definition of the quantum of evidence necessary to establish a drug nexus. Indeed, the Review expressly suggested that the relevant policymakers develop more precisely defined criteria for determining when a drug nexus is sufficient to justify nonreimbursable military assistance.

Why did the ATF decide to enforce its warrants through a dynamic entry rather than some other option? And was the raid plan well-conceived and properly executed?

As the probable cause investigation was nearing its conclusion, ATF tactical planners were deciding how best to execute the warrant they expected to soon obtain. At first, the planners considered the siege option. Under this scenario agents would first ask those inside the Compound to honor the warrant. If access were denied, ATF would immediately establish a perimeter around the Compound and seal off its inhabitants until they relented and permitted the search to proceed. This option might have minimized the risk of a violent confrontation between ATF and Branch Davidians and, even if violence ensued, would have minimized the agents' exposure to gunfire from the Compound. This option was ultimately rejected, however, for several reasons. Several former Compound residents noted the danger that Koresh might respond to a siege by leading his followers in a mass suicide. In addition, the residents had their own source of well water and at least a three-month supply of military rations, and so might well have withstood a long and arduous standoff. The planners also were worried about the destruction of evidence within the Compound during a siege.

In evaluating the rapid planning process, the raid plan itself, and the execution of that plan, the Treasury Review was assisted by six, independent tactical oper-

ations experts. Each of those experts had access to all Review materials, and each filed their own analysis for inclusion in the Treasury Report.

With the help of those experts, our report reached a number of important conclusions concerning the raid planning process. I identified several of those conclusions earlier: that the raid planners should not have rejected the siege option without the assistance of experts better equipped to evaluate the accounts of former Branch Davidians and the reactions of current Branch Davidians; that the planners gave insufficient attention to arresting Koresh away from the Compound, based in part on a seriously flawed intelligence-gathering and processing system; and that the raid plan itself was based on critical assumptions that were not grounded in fact.

In addition to the intelligence gathering and process flaws identified earlier, the report concluded that the planners failed to engage in meaningful contingency planning. The absence of any contingency plan, other than to abort the raid before arrival at the front door of the Compound, left the raid commanders with the stark choice between going forward with the raid after surprise was lost or canceling an operation in which they had made a tremendous investment.

Finally, as to the technical merits of the raid plan itself, most of the Review's tactical experts agreed that the plan had a reasonable chance of success if all of the planners' major factual assumptions had been correct. The experts disagreed, however, over whether the plan was a good one.

Media impact on ATF's investigation

Our report analyzed the interaction between ATF and the media before and during ATF's raid on the Branch Davidian Compound. The interest of the media in covering suspected criminal conduct and official responses to that conduct will often be in tension with law enforcement's need to have the advantage of surprise in its activities. Here those interests collided first before the raid, when ATF was unable to persuade a local newspaper to delay its publication of a series about Koresh and his followers. We concluded that while those negotiations might never have been successful, had they been entrusted to someone in ATF with more expertise in media relations, an arrangement more suitable to ATF and the paper might have been made.

On the day of the raid, media activity in the area of the Compound tipped off Koresh, allowing him to lay his ambush for ATF agents. Employees of the local paper and a local television station roamed the roads in the area of the Compound for more than an hour before the raid. A cameraman for the television station told a local letter carrier, who unbeknownst to the cameraman was a resident of the Compound, that a raid was imminent. The letter carrier in turn told Koresh, who then prepared his ambush.

The flawed decision to go forward with the raid

The report addressed why ATF's raid commanders proceeded with the raid even though they should have realized that the raid had been compromised. We concluded that the decision to proceed was tragically wrong, not just in retrospect, but based on what the decisionmakers knew at the time. Based on interviews of all surviving law enforcement participants in the raid, it was and is clear that the raid commanders had more than enough information from the undercover agent to conclude that the raid had been compromised. The report further concluded, however, that the flawed decision to go forward was not simply a matter of bad judgment by the raid-day decisionmakers. It was also the product of serious deficiencies in the intelligence gathering and processing structure, poor planning and personnel decisions, and an overall failure of ATF management to check the momentum of a massive operation.

Treasury oversight

Our report examined the role of the Treasury Department, and in particular the Office of the Assistant Secretary for Enforcement, in the February 28 raid. The Office of Enforcement, which has oversight responsibility for ATF, was not advised of the planned raid until fewer than 48 hours before it was to begin. Although the Office of Enforcement's approval was not sought, concerns about the action caused that office to direct that the raid not go forward. As the report stated, those concerns were expressed by several individuals in the Office, including Ron Noble, who at the time was acting as a part-time consultant pending his nomination and confirmation as Assistant Secretary for Enforcement. ATF then provided assurances that the raid was necessary, carefully planned, and designed to minimize the risk to all involved. Based on these assurances, which addressed the concerns raised by Noble and others, the raid was permitted to proceed.

We further concluded that the responsibility for ATF's failure to notify the Office of Enforcement until fewer than 48 hours before the raid rested with both ATF and

the Office of Enforcement, which at the time had no regulation or guideline that required notification from ATF. As noted in the report, the Office subsequently instituted new guidelines and regular meetings with enforcement bureau heads to ensure early notification of significant operations that will permit meaningful oversight and review.

ATF post-raid dissemination of misleading information about the raid and the raid plan

The report described how, in the wake of the February 28 tragedy, the raid commanders and their superiors in the ATF hierarchy attempted to answer the call for explanations. Critical aspects of the information that they provided to the public was misleading or wrong. Two of the principal commanders, in particular, appeared to engage in a concerted effort to conceal their errors in judgment. Their conduct had the effect of wrongfully pointing the finger at a line agent as being responsible to the failed raid. In addition, ATF's top management, perhaps out of a misplaced desire to protect the agency from criticism, offered accounts based on those raid commanders statements, disregarding evidence that those statements were false. The report also described the alteration of the written raid plan by raid commanders, after the raid itself, and the submission of that altered plan to the Texas Rangers and to the Review, without any indication that it was not the original raid plan.

CONCLUSION

The Treasury Review was thorough, accurate, and candid. It did not shy away from criticizing, where appropriate, the conduct of ATF and ATF personnel. The independent reviewers and Treasury's Inspector General gave it their full support. Upon the report's publication in September 1993, it was praised by members on both sides of the aisle, as well as by much of the media. I am aware of nothing that has been learned in the more than two years since that calls into question the central findings of our report.

The CHAIRMAN. Well, thank you, Mr. Moulton. That was an excellent statement.

Mr. Kolman, we will turn to you.

STATEMENT OF JOHN A. KOLMAN

Mr. KOLMAN. Thank you, Mr. Chairman.

As you have indicated, my name is John Kolman. I am a retired captain from the Los Angeles County Sheriff's Department, having retired in 1987 with over 26 years of law enforcement experience. In addition to assignments within patrol, detective, technical services, and administrative divisions, I spent almost 9 years with the department's tactical unit as a SWAT team leader and then later as a SWAT commander. During my tenure with the department, I was involved in the resolution of over 225 barricaded suspect incidents, 25 hostage incidents, and the service of other 300 high-risk warrants. I was the principal planner of the 1969 raid at the Spahn Movie Ranch, which led to the arrest of Charles Manson and his cult, following the Tate-La Bianca murders. This operation involved over 150 tactical and nontactical personnel, as well as numerous departmental and other agency resources. I was also the chairman of the interagency In-Transit Security Subcommittee for the 1984 summer Olympic games in Los Angeles and have planned many tactical and conventional operations of varying magnitudes. In 1983, I founded the now thriving National Tactical Officers Association, an organization comprised of past and present members of law enforcement or military SWAT units and acted as its director until 1993, when I relinquished control to a board of directors and new executive director. I am a graduate of California State University at Los Angeles where I earned both B.S. and M.A. degrees. I am also a graduate of the FBI National Academy, as well

as numerous law enforcement-related schools and courses of instruction. I am the author of "A Guide to the Development of Special Weapons and Tactics Teams" and many articles which have appeared in various law enforcement journals. I have provided instruction to literally thousands of police officers from throughout the United States, Canada, and other countries on subjects varying from SWAT operations to patrol procedures. I am an adjunct faculty member or former adjunct faculty member of numerous California colleges and universities, the International Association of Chiefs of Police, the U.S. Department of Energy Central Training Academy, and other organizations which provide police training.

I am well aware of the important role properly processed information has in achieving operational success. My practical experience ranges from utilizing intelligence data for pre-planned events, such as the 1984 summer Olympic games and the 1987 Pan American games, to directing complex undercover narcotics operations, and the service of high-risk warrants. This experience has caused me to greatly appreciate the value of appropriate intelligence.

As a member of the Tactical Expert Advisory Panel for the U.S. Department of the Treasury, I reviewed numerous documents, interviews, videotapes, and other information related to the attempted service of search and arrest warrants at the Branch Davidian Compound outside of Waco, TX, by agents of the Bureau of Alcohol, Tobacco and Firearms on February 28, 1993. The results of my independent review are included, as Mr. Moulton indicated, as one of the appendices to the Treasury report. Although I identified and discussed a number of deficiencies, including those related to the intelligence function, by far the most significant was the identification of a failure on the part of command personnel to properly direct and control most phases of the operation. However, I ultimately concluded that had the operation not been compromised by the media, unwittingly or otherwise, there was a reasonable expectation that it would have succeeded.

With specific reference to the intelligence aspects of the operation, I think it is important for all of us to understand that intelligence is a support function. It doesn't exist in and of itself. It is a support function that assists planners and command personnel in making appropriate tactical decisions and tactical choices. The relationship that exists between intelligence and operational success was well recognized from the beginning by ATF planners. Confirmation of that concern is reflected by the varied sources planners utilized to obtain pertinent information. These sources fell within accepted intelligence categories, and they are, as many of you know, human, imagery, and electronic, and consisted of the following—and for the sake of time, I won't read all of these, but just selectively: Interviews of former cult members, interviews of neighbors, UPS employees, criminal records checks, court documents, and so on and so forth—again, demonstrating an appreciation for the importance of intelligence.

Importantly, planners took into account their assigned objective, which was, of course, effecting search and arrest warrants at the compound, and established perceived requirements. For example, in order to obtain the most relevant information, planners prepared a list of 38 questions to ask of former cult members. Responses to

these questions established critical information, such as the location of firearms, the threat of mass suicide, and the self-sustaining capabilities of the cult. This information, along with that from other sources, prompted planners to select what they believed to be the best tactical alternative—and as we all know now, that was a dynamic warrant service—which relies upon surprise, speed, and diversion. Updated information was provided by undercover personnel residing in a house across from the compound. While establishment of the house was an essential element of the operation, it did not realize its full potential because of a lack of initial direction and control. And, of course, this, coupled with the lack of an established system of analyzing data received from all sources, resulted in the dissemination of some information that was either incorrect or partially correct.

Other issues of significance, both related and unrelated to intelligence activities, are discussed within my independent report. There are undoubtedly those within the field of academia—and we have heard from some of them today—and even some within the field of law enforcement, who believe that planners should have consulted with so-called cult experts, psychologists, and sociologists before deciding to serve warrants at the compound. In my opinion, for planners to have done so would have accomplished little or nothing of significance under the circumstances. Consulting with outside experts would not only have breached operation security during the critical planning stage, but would have in no way enhanced the recognized elements of surprise, speed, and diversion necessary to dynamically serve search and arrest warrants at the compound. And please don't misunderstand. I am not saying that law enforcement should not take advantage of available resources. I am saying that circumstances will dictate what resources should be accessed.

For example, had they chosen to contain the compound and order the surrender of David Koresh and his followers, consultation with outside experts would have been logical. However, they chose not to do so because of the threat of mass suicide and reasons we have already discussed.

As already mentioned, I believe all noted deficiencies were identified and related within the Treasury report.

To their credit, the Department of the Treasury accepted the report as an extensive, objective review of BATF's involvement, and the new administration of the ATF implemented many of the recommendations included in the report. Others are planned for future implementation. In so doing, both entities ensured that the loss of four agents and the wounding of 20 others was not in vain.

Last, as an American citizen and former law enforcement officer, I have grown increasingly disturbed at the seemingly unending attacks against the dedicated men and women of the Bureau of Alcohol, Tobacco, and Firearms who, because of initial orders to the contrary, were unable to defend themselves verbally. These attacks have been made through the media by various groups with motives that are all too apparent. Unfortunately, it has been my observation that the direction of congressional hearings thus far has only added to the lack of understanding and ill will that has existed since February 28, 1993, and further eroded public confidence in

Federal law enforcement—and, of course, by association, all law enforcement.

Suggestions that the ATF be disbanded and/or its duties and responsibilities transferred to other already overburdened Federal agencies are, in my opinion, unnecessary and ill-advised, especially at a time when violent firearms-related crime is proliferating at an almost unprecedented rate.

If I might digress just for a brief moment, I think it is significant that the International Association of Chiefs of Police, which is the organ of law enforcement in this country, at their 100th annual convention passed a resolution opposing the merger of ATF with the FBI.

Anyone who has read or even skimmed through the Treasury report cannot help but recognize the tremendous effort that was expended by the Department of the Treasury, members of the Waco review staff, and individual members of the expert panel to identify deficiencies in organization, structure, and performance of the BATF. The personnel changes that occurred as a result of the review were unparalleled within my experience. I don't know what more anyone could expect or have them do.

As I mentioned in my statement before the Joint House Subcommittee hearings in July of this year, ATF agents are sworn to enforce the laws of our country—laws enacted by Congress. That is what they were doing on February 28, 1993, and that is what they are trying desperately to do to this day, despite the adversity created by repeated attacks against their agency. I have had the opportunity to work with agents of the ATF throughout my career, and I have always found them to be dedicated professionals who do a difficult and unpopular job very well.

I encourage you to objectively review the investigative work that has already been done and look at the positive changes that have already been implemented by ATF. I believe this review will reflect the need for no further action on the part of Congress.

Thank you very much for the opportunity to enter this statement into the record.

The CHAIRMAN. Well, thanks to both of you. Mr. Moulton, as project director, you were instrumental in putting together the Treasury review of Waco, and an important part of that was picking experts to assist you, one of whom, of course, is Mr. Kolman.

Mr. MOULTON. That is correct.

The CHAIRMAN. And we have appreciated the testimony that both of you have had here today.

I have to say also that one of my concerns was the immediate resort to the planned use of force. To me, any dynamic entry should have been a last resort, not an early resort. At Waco, the tactical planners did not give sufficient time and effort to considering and analyzing the alternatives to a raid. And I would have to say that the Treasury review agrees with that sentiment as well because the review concludes that "the agency's failure to gather information needed to assess the chances of such an alternative succeeding made its rejection of them and its choice of raid option far too premature." So I was very interested in that report.

Mr. Moulton, in light of your colleague's comments that ATF should not be disbanded or moved, do you agree with that? Do you have an opinion or two on that?

Mr. MOULTON. My response is that ATF absolutely should not be disbanded or moved based on what happened in Waco 2½ years ago. I think there are interesting arguments to be made in terms of efficiencies in Federal law enforcement on the one hand versus problems inherent in putting all Federal law enforcement authority in one or just several sources.

But one thing that is clear: ATF, I think, should not be judged on what happened on April 28 in Waco or near Waco, TX. ATF in my experience as a prosecutor is a wonderful law enforcement organization. If you go and talk—we heard a lot earlier about local law enforcement and the cop on the beat. If you go talk to the cop on the beat, I think anywhere in this country, and ask them what law enforcement agency in the Federal system they most effectively work with, they will tell you 9 times out of 10 that it is ATF.

ATF does a lot of things very well. There were in the operation at Waco a number of very serious problems. We tried to identify them as best we could in the report. My understanding is that most of the problems we identified, if not all of them, have been directly addressed by the new management at ATF. So the one thing I would urge—I don't have a final opinion for you, but I would urge that any decision about moving Federal law enforcement responsibilities around, particularly those involving ATF, that it be based on what ATF does today, based on its area of expertise, potential losses from such a move, and that it not be based on a single tragic event of now 2½ years ago.

The CHAIRMAN. Well, thank you. Mr. Kolman, your statement was excellent. Both of you were excellent here today. I think you have added a lot to this. So let's turn to Senator Biden.

Senator BIDEN. Thank you very much.

Mr. Moulton, your review concluded that ATF's inquiry into Koresh and the Davidians was consistent with the agency's congressional mandate to enforce Federal firearms laws. Isn't that correct?

Mr. MOULTON. That is correct, Senator Biden.

Senator BIDEN. And, in fact, didn't the review conclude that ATF would have been remiss and irresponsible if it had not sought to enforce the law against Koresh and his followers?

Mr. MOULTON. That is correct. ATF was presented with evidence from the local sheriff's department and a UPS delivery driver of potentially serious, longstanding violations of Federal firearms and explosives laws. In addition, it had reason to believe that Koresh and his followers might pose a danger not only to themselves but to the surrounding community. And had ATF not followed up on those concerns raised by local law enforcement, I think we might be having hearings today asking why they didn't.

Senator BIDEN. Now, let me ask you, which raises the third and final question I have, because I have read your report, and your testimony is self-explanatory. A lot of people have the notion—I shouldn't say a lot of people. A lot in terms of absolute numbers, a small number in terms of percentage of the American population have the notion that ATF and the FBI have been running around

and infiltrating organizations, targeting religious groups, targeting folks, and that what happened in Waco was they did just that; they had this guy, David Koresh, on a bulletin board or something in the ATF offices, and they had—the FBI had this, and they said, you know, we got to figure a way to get this son of a gun.

Isn't the way it actually happened—and it is worth reiterating—that local officials picked up the phone and called ATF and said I think we got a problem here?

Mr. MOULTON. That is absolutely correct, Senator. As far as we were able to determine, David Koresh was not someone known to ATF at all prior to May 1992, at which time the McLennan County Sheriff's Department called ATF and said: We have some information here from a UPS delivery driver, as well as information we have developed ourselves, interviewing neighbors, et cetera, that is of concern to us; we think it raises issues of Federal firearms violations; it is beyond our ability to handle it; would you please come in and help us?

Senator BIDEN. Again, I don't think that goes to whether or not they made mistakes, but I think it goes to one of the central themes out there among the conspiratorial folks, left and right and center—well, not many in the center, but left and right, who see everything as some great conspiracy.

Since I have been in Washington, which has been a while now, I have become convinced that few conspiracies are probably true because I find people are usually pretty stupid. And to keep a conspiracy going, you have got to have a lot of very bright people who are able to keep secrets. And I have not found that in Washington or Wilmington. You know, I always find it—seriously, when you think about these conspiracy theories, they rest upon a notion that there is this network of people who can keep a secret. My Lord, I mean, I was in the Intelligence Committee. We couldn't even keep—the Intelligence Committee did. The administrations couldn't even keep secrets about, you know, backfire bombers and whether or not what they were doing. I mean, we couldn't keep secrets about stealth bombers. And the idea that everybody is out there, we got this conspiracy—I mean, I listen to the Rush Limbaughs of the world, and he is—well, I shouldn't say that. I don't know what he said on that. But conspiracy theories.

And it is very important, I think, to establish that this wasn't Big Brother sitting up in Washington going, now let's look across the map out here, Oklahoma, there is another one of those groups out there, let's target them. Local people called Federal officials, who were local, I expect, and said we got a problem, can you come and help us, right?

Mr. MOULTON. That is right. ATF behaved exactly as we would want ATF to behave, up through the time—or up until the time that they began to—

Senator BIDEN. Well, let's assume they didn't even behave—well, all I want to establish for the record—let's not confuse it—is real simple: Nobody in Washington, nobody in ATF, nobody involved with ATF had an idea that, you know, those Branch Davidians are dangerous people, Koresh is a dangerous guy, we have got to be aggressive and go after them.

Mr. MOULTON. This investigation was begun at the request of local law enforcement, so not based on any effort or desire to target Koresh and his followers.

Senator BIDEN. There have been claims that ATF has been—my time is up.

Senator GRASSLEY. Senator Hatch asked if I could continue and then after that ask Mrs. Feinstein to take over.

I only have one question. I am going to read, Mr. Kolman, from page six of your statement, not the whole paragraph, just two sentences out of the paragraph. "As an American citizen and former law enforcement officer, I have grown increasingly disturbed by the seemingly unending attacks against the dedicated men and women of the Bureau of ATF who, because of initial orders to the contrary, were unable to verbally defend themselves."

And then the last sentence, "Unfortunately, the direction congressional hearings have taken thus far has only added to the lack of understanding and ill-will that has existed since February 28, 1993, and further eroded public confidence in Federal law enforcement and, by association, all law enforcement."

Are you suggesting here in your opening statement that Congress and the critics of the ATF are responsible for the crisis of law enforcement today? Of course, I understand your desire to defend ATF, but to what extent do you think that there is a crisis in confidence and to what extent does ATF have a role in that crisis?

Mr. KOLMAN. I think we are looking here, Senator, at a situation where from the very inception there had been a tremendous amount of misinformation disseminated, some intentionally, some unwittingly, some purely because of the lack of factual data that was available at the beginning. This, of course, was disseminated, understandably, through the media.

The House hearings, I think, did little to clarify some of the misconceptions that the American people have about what really occurred, and what was disturbing to me was that I donated a week of my life to come to Washington to help allay some of those fears during the House hearings and I was asked one question during a 6-hour period.

Tactical questions, on the other hand, were asked of a well-intentioned young woman, Joyce Sparks, who has no knowledge of tactics, who knows the social worker aspect but certainly nothing having to do with what was tactically done and why it was done and why dynamic entry was selected. Dynamic entry is a simple procedure in terms of definition. It is not a military attack. It is not a military symbol. It doesn't come from the military. It is nothing more than an unexpected, vigorous entry, and because it's unexpected, of course it relies upon surprise, speed, and diversion.

In terms of the misleading statements, there are all kinds of organizations out there that have utilized the media—

Senator GRASSLEY. No, I think your answer is legitimate, but we are short on time. Do you think that Congress, by having hearings, is somewhat responsible for the crisis in confidence?

Mr. KOLMAN. No, absolutely not. I think the hearings are justified and they are necessary.

Senator GRASSLEY. Then the second part of my question is, does ATF have any responsibility for the crisis of confidence that you talk about, and I talk about it as well.

Mr. KOLMAN. ATF has responsibility and they are accountable for their actions and I think they stood up, they have been counted. What I am saying is that when these hearings conclude, there has been enough investigation to look at what transpired and to learn from them, and there are a tremendous amount of learning points from what happened. I teach them. I emphasize to local law enforcement and State law enforcement what needs to be done to correct some of the deficiencies, not within ATF but within law enforcement as a whole.

What ATF did is probably no different than what many local law enforcement agencies would do in terms of approach, in terms of what intelligence information they had. They had faulty intelligence information, and based on that, they made some mistaken judgments that they would not have made otherwise.

Senator GRASSLEY. I think you have answered my question. I would just like to say again what I said this morning. I start out with a presumption that law enforcement officials are good until proven otherwise, just like I hope the public will start out with a presumption that Members of Congress are good until proven otherwise. But I do believe there are serious management and cultural problems that need to be addressed. These hearings partly address that, but these are very fundamental problems. The militarization of domestic law enforcement is a problem and I think we have to deal with that.

Mr. KOLMAN. Can I comment on that, please?

Senator GRASSLEY. Yes, of course you can, I mean, as long as the chairman will let you.

Mr. KOLMAN. Many of you have alluded to the fact that law enforcement has become too militaristic. I think we all know that organizationally, law enforcement in the United States is paramilitary. It is paramilitary in terms of structure and organization. But I am sure that what you are talking about when you say that law enforcement is becoming militaristic is that you are referring to characterization of people that are working specialized tactical assignments, such as special response teams, SWAT teams, things of that nature—

Senator GRASSLEY. Like the picture says.

Mr. KOLMAN [continuing]. Because of the photos that you showed earlier during the hearings. The reason that this image occurs is because of the functional equipment that SWAT teams, that tactical units have to utilize to protect the members of the community and themselves.

I know you are not proposing that protective gear, such as helmets, which some Members of the House during the hearings characterized as Darth Vader helmets—those are protective ballistic helmets. They serve a legitimate life-saving function. Vests, the weaponry that is utilized is utilized for good reason, because of the propensities toward violence in the types of weaponry that law enforcement is encountering today.

If what we are seeing is because these are similar to weapons and equipment that are being utilized by the military, that we

should not do this any longer, that we should go back to the six-shot revolver and go up and knock on the door of a compound that contains the type of weaponry that existed outside of Waco, TX, I think is ludicrous.

Senator GRASSLEY. Let me clarify, Mr. Chairman. I am not talking about weapons or equipment. I am talking about an attitude that puts tactical over the life-saving efforts that I think have been the tradition and the significance of local law enforcement.

Mr. KOLMAN. I think it is still a tradition. It is still a tradition. Law enforcement goes into an operation and utilizes those resources that are available.

The CHAIRMAN. I think what Senator Grassley is referring to is that there were mistakes here. You both admit that, and basically, they occurred because of the misuse of—well, they did not have correct intelligence, for one reason, did not have appropriate instructions, and, frankly, these mistakes were made. Everybody admits that.

The question is, what can we do to make sure that does not happen again? We are concerned about paramilitary or military operations that should be used as a last resort, not a first resort. I think you make some very, very telling points here today that I think are very important to this committee and to those who are considering law enforcement.

Mr. KOLMAN. Thank you.

The CHAIRMAN. We have all watched television and SWAT teams and we have seen them adulated for the sacrifices they have made. Well, I have watched the HRT. I have gone down and seen them in action. These are people who risk their lives all the time for us. They do not get any publicity. Most people have not even heard of them vis-a-vis SWAT teams. But the fact of the matter is, they have done heroic things to protect Americans all over the world.

Because there have been some mistakes here, they are under strict scrutiny by many who have not understood the missions or the goals that they live for and some of them risk their lives for. You, I think, have done a very good job of helping us to understand some of those, so we really appreciate it.

Senator Feinstein, we will finish with you.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Mr. Kolman, I think one of the strengths and one of the reasons that Americans can trust law enforcement more because of these hearings is because they are bringing to light the fact that the FBI and the ATF are making changes in procedures based on problems encountered in missions and incidents that they have been involved in. I think that is a big strength.

Let me ask you a question. If you were the commander, would you have used tanks?

Mr. KOLMAN. Are you referring to the FBI involvement or the ATF involvement?

Senator FEINSTEIN. I am referring to the use of tanks at the Branch Davidian headquarters, and my question to you is, if you were the commander, would you have used tanks?

Mr. KOLMAN. Given the knowledge that the individual that made that decision had at the time, yes, I would have, and I think it is important to note that there is a lot of intelligence information that

was valid that came in to the decision making process and a lot of it had to do with the open terrain surrounding the compound.

If there had been any other piece of equipment that could have been used, whether it had been a fire truck, a dump truck, anything that would have stopped the caliber of weapon that Senator Biden demonstrated earlier during the hearings, a 50-caliber bullet, in other words, they would have used it.

The use of the type of armor that they used was selected because it had the ability to stop the projectiles that were being utilized. There was no attempt, I do not believe, at least nothing that I was able to uncover in the review, that anyone approached this with the intent of being perceived as utilizing all the military firepower, all the military armor that they could possibly muster. They tried to approach it in as logical a manner as any law enforcement agency could. But when it was determined there was no cover, that is why they used the armor.

Senator FEINSTEIN. I am limited in time, and I appreciate it. I wanted to get your view.

I would like to now go to Mr. Moulton, if I might, and go to page six of your comments. Let us talk about the intelligence, because I think your written comments, Mr. Moulton, which I have reviewed, I think are very helpful in looking at this. Then I will go to you, Mr. Kolman, and perhaps you will tell me what was right about the intelligence.

Let us talk for a moment about what was wrong. You point out the following on page 6, that the planners believe that Koresh never left the compound when, in fact, he did; that ATF failed to provide the agents in the undercover house with enough technical support; that raid planners misunderstood the nature and certainty of the intelligence concerning his movements. Therefore, they devoted insufficient effort to developing a plan to lure him away from the compound.

You say they believed that all the weapons were kept under lock and key when they were not; that all of the men in the compound would be out on a construction site at 10 a.m. in the day, and they were not; that the women in the compound would be unarmed, and they were not; and that the raid was planned for 10 a.m. rather than a pre-dawn time which might have taken them by surprise.

You go on to say that the intelligence-gathering effort failed by leaving potentially important resources untapped. Would you expand on that, please?

Mr. MOULTON. Just on the last point, or—the written statement captures what we said in the report, which was that there were fundamental problems in terms of really all three aspects of successful intelligence operations. One, in terms of the development of adequate and reliable information; two, in terms of the dissemination of that information to the relevant decisionmakers; and three, in terms of ensuring that the decisionmakers understood both the meaning and the limitations of the information they had.

In this case, the people principally gathering tactical intelligence, those in the undercover house across from the compound, were inadequately supervised. The information they did gather was not centrally processed and analyzed. The tactical planners, as a re-

sult, believed they had hard information which was not hard information.

Senator FEINSTEIN. I will stop you right at this point. When Mr. Rodriguez came out and said, "They know what is going to happen," what needs central supervision about that? It seems to me that means the surprise element is blown.

Mr. MOULTON. We concluded, if I can answer the question, we concluded that the information provided by the undercover agent, Robert Rodriguez, was more than adequate to give the decision makers enough information to stop the raid, and they should have. They understood the surprise was lost and they failed to stop the raid despite that understanding.

That is not to say that the situation could not have been improved. One of the problems that we pointed out in the report and was pointed out by several of our experts was that Robert Rodriguez was debriefed over the telephone in a hurried manner. He had no control agent, no one to sit down and calmly assess his information.

Having said that, in other words, that his information could have been better processed and understood, we nonetheless concluded that he gave plenty of information, sufficient to stop the raid.

Senator FEINSTEIN. Mr. Chairman, may I just ask Mr. Kolman what he believes was right about the intelligence?

The CHAIRMAN. Yes.

Senator FEINSTEIN. Thank you very much. Please, go ahead.

Mr. KOLMAN. Yes, madam. As I indicated earlier, there were some positive things about the intelligence function. Of course, it is difficult to discuss them without first indicating that the major problem was a lack of supervision or direction and control of that operation.

For example, the establishment of the undercover house was extremely positive and the oversight provided by Washington ATF personnel, indicating that they wanted someone to make contact with people in the compound and, if possible, to make contacts specifically with David Koresh so that they could assess what was going on from a first-hand perspective, those were all positive things.

The information that these eight gentlemen gathered was incredible, based upon the lack of direction they received. They referred to their past experience, what they thought planners would want to know, and they transmitted that information to the best of their ability; they thought of getting to planners in real time, when, in fact, because of a failure to have a central processing system, that information was not timely, nor was it entirely accurate.

Based upon that false information, planners made their selections. They looked at calling Koresh out. They looked at the possibility of enticing him through subterfuge out of the compound. But because of the information they thought was coming on a 24-hour basis to them, they did not select those alternatives. They did not go directly to the dynamic entry. They looked at all tactical options beforehand, and as they established the plan to do these things, intelligence came in that prompted them to change their minds.

So again, it is not that there were not some positive things about the intelligence-gathering mechanism. It is the lack of proper proc-

essing or analyzing, evaluating, and then dissemination in a timely manner that caused the problems.

Senator FEINSTEIN. Thank you very much, both of you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feinstein, and thanks to both of you. We appreciate having your testimony here today. I think it has been very helpful to the committee and to everybody who is concerned about this matter, so thank you very much.

Mr. MOULTON. Thank you, Mr. Chairman.

Mr. KOLMAN. Thank you, Mr. Chairman.

The CHAIRMAN. I am running out of time for this morning because I have to be at this caucus meeting, but let me just say I am going to go ahead with the next three witnesses and let them make their statements before lunch and then we will recess until an appropriate time.

With the appearance of the next panel, I feel it is important to emphasize that the line agents are not to be blamed for the tragedy but rather are to be commended for their service and heroism. They remain victims in the aftermath of Waco with their physical scars and painful memories. So I do not blame these line agents, nor should anybody else.

Our next panel consists of some of these agents: Jerry Petrilli, Jeff Brzozowski, and Roger Guthrie. Agent Petrilli was the Dallas SRT team leader for the raid. Agent Brzozowski was one of the undercover agents who lived in the undercover house and risked his life for us. Agent Guthrie was one of the forward observers, all three of whom risked their lives.

In different ways, each of these three agents contributed to or relied on the intelligence gathering and information collection that was done in preparation of the raid. In different areas, each of these agents will describe how intelligence and information was gathered and how surveillance was done.

In its entirety, their testimony will demonstrate problems with the methods of gathering intelligence and information during the Waco investigation in each of their areas of participation and what it meant in the ultimate execution of ATF's plan.

I hope you can limit yourselves to 5 minutes each. If you cannot, we will understand, but I would like you to if you can. We appreciate having you here. Like I said, you folks are heroes to me and, I think, to others who really know how you risked your lives for us and do it repetitively, but especially in this particular case.

We will start with you, Mr. Petrilli, first.

PANEL CONSISTING OF GERALD T. PETRILLI, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, WASHINGTON, DC; JEFF BRZOZOWSKI, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, AUSTIN, TX; AND ROGER J. GUTHRIE, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DETROIT, MI

STATEMENT OF GERALD T. PETRILLI

Mr. PETRILLI. Thank you, sir. Chairman Hatch and distinguished committee members, my name is Jerry Petrilli and this statement is being made regarding the events leading up to the attempted

service of search and arrest warrants at the Branch Davidian compound at Mt. Carmel on February 28, 1993, and the subsequent events that took place.

I would first like to say that it is an honor to speak before this committee and in some part to represent the fine agents of the Bureau of ATF and specifically the 106 special agents who came under fire on February 28, 1993, but most importantly, to pay tribute to four of our special agents who can no longer voice opinions, express their views, or state the facts.

I have been a special agent with ATF for over 19 years, serving in New York, Los Angeles, Albuquerque, NM, and currently in Washington, DC, as the special agent in charge of the Tactical Response Branch, which has oversight of the Special Response Team program. At the time of this action, I was assigned to Albuquerque, NM, as the resident agent in charge and was also the team leader of the Dallas Division Special Response Team.

During my years with ATF, I have received tactical training in numerous disciplines from organizations which include the National Tactical Officers Association, the International Association of Chiefs of Police, Los Angeles County Sheriff's Department, Los Angeles Police Department, Dallas Police Department, and many, many others.

In preparation for the service of the warrants on February 28, 1993, I attended four planning meetings in the Houston and Waco, TX area, starting in December 1992. At these meetings, I interacted with a number of colleagues in the tactical planning process and, in addition, spent countless hours at the Albuquerque office and at my home on this assignment. It should be noted that all SRT work is voluntary and collateral to our regular duties.

During the days prior to the service of the warrants, I participated in mission-specific training at Fort Hood, TX, along with all of the other participants in the warrant service. During this training, I presented the plan to the Dallas team, which was predominately responsible for securing the second floor and the three towers, an area believed to be occupied by women and children.

In addition, we had agents from the team clearing a building to the north, providing security to a forward observer team, and clearing vehicles. During this training, refinements in the plan were constantly interjected, keeping in mind the safety of the children as a paramount concern.

Late on the afternoon of Friday, February 26, we learned of a newspaper article being released that evening regarding the lack of law enforcement action in regards to the activities of the Branch Davidians. As a result of this article and a concern that it would cause a heightened alertness by the Branch Davidians, the operation was moved up from Monday, March 1, to Sunday, February 28.

On the morning of February 28, I traveled from Fort Hood to a staging area in Waco, and at approximately 9 a.m., ASAC Sarabyn, the tactical commander of the operation, announced that the Branch Davidians knew we were coming, that no preparations were being made by them but that we must go quickly. I then proceeded with last-minute preparations for the team and we departed

the staging area in cattle trailers en route to the Branch Davidian compound.

At approximately 9:45 a.m., as we turned into the compound, I was riding in the first cattle trailer, which stopped at the far end of the structure. I was in the third row of special agents exiting the vehicle, and after taking approximately four or five steps, I realized that we were taking rounds from the compound.

I continued to cross the open area behind other vehicles until I came to an open area leading to the front door. I turned in this area, heading toward the front door, when I felt a large concussion, which at the time I believed was from a shotgun round hitting me. I continued a few steps forward and placed myself down behind a fence line and returned fire with my handgun.

At some time into the fire fight, I took the time to examine myself and found that I had been hit in the right arm, wrist, and hand and in the upper left arm. In addition, I saw holes across the chest area of my load-bearing vest but felt no injury.

I was continually pinned down in this area by gunfire from the Branch Davidians for the next hour and 52 minutes. During this time, I believe I was shot at with M-16's, AR-15's, AK-47's, and a .50 caliber weapon. I also attempted, to no avail, to organize a rescue of Special Agent King, who was pinned down in the center of the compound. Only after a cease-fire was negotiated were four very brave special agents able to rescue Special Agent King before he bled to death from his wounds.

When the cease-fire was finally negotiated, I started down the driveway with other agents when it was pointed out to me that an agent was lying on top of the roof where the New Orleans team had been. I turned and went back with other agents following and climbed a ladder and rolled over an agent and verified that he was dead. I then saw another agent on the downward slope of the roof and did the same.

I then assisted in removing our dead special agents and left the property and walked to a waiting medical transport to the Hillcrest Hospital. At the hospital, I was examined and the doctor determined that my wounds were from a fragmentation grenade. A few weeks later, my vest was returned to me and I found a 5.56-millimeter round in the chest pocket area which was stopped by a tool in the pocket of my vest.

I would like to close by continuing with my tribute to our four special agents who can no longer voice opinions, express their views, or state the facts, because on February 28, 1993, while attempting to serve lawful warrants for violations of laws passed by the United States Congress and signed by the President of the United States and entrusted to the Bureau of ATF for enforcement, they were murdered by members of the Branch Davidian who chose to violently oppose this lawful action.

The Branch Davidians did not take the 45 minutes of advance knowledge of this activity to flee from law enforcement, as most criminals would. They did not choose to hide or destroy evidence, as many criminals would do. They did not choose to contact law enforcement through their attorney, who was present in the compound, as some criminals would do.

Instead, they chose to create an ambush for law enforcement which resulted in four special agents dying. It left three widows and two children without a father, and it left many parents, relatives, friends, and loved ones to grieve to this day. In addition, the choice left over 30 other special agents wounded and an entire Bureau and a nation affected to this day.

My statement is dedicated to the memory of Conway LaBleu, Todd McKeehan, Rob Williams, and Steve Willis.

The CHAIRMAN. Thank you, Agent Petrilli.

We will now turn to you, Mr. Brzozowski.

STATEMENT OF JEFF BRZOZOWSKI

Mr. BRZOZOWSKI. Chairman Hatch and distinguished committee members, my name is Jeff Brzozowski. I am a special agent with the Bureau of Alcohol, Tobacco and Firearms assigned to the Austin, TX, field office. I have been employed as a special agent with ATF for 7 years. Prior to this, I was employed as a criminal investigator with the U.S. Customs Service for approximately 1 year.

In December 1992, I was assigned to assist in the investigation of Vernon Howell, also known as David Koresh. It was at this time that a decision was made by ATF supervisors to set up a surveillance post near the compound. Initially, I was assigned the task of gaining the cooperation and approval of a neighboring landowner to allow ATF to use a vacant house on his property for surveillance.

In early January 1993, I was one of seven ATF agents assigned to participate in what was supposed to be a 2-week surveillance operation in which I would live and work in the house across the road from the Davidian compound. This assignment required that the other agents and I take on the identity of college students in order to explain our living in the house. This house was located approximately 250 yards away from the compound and was a few miles from the Texas State Technical College.

During those first 2 weeks, we operated in 8-hour shifts. Agents watched the compound 24 hours a day and documented their observations. During this time, agents watched the compound, took photographs, and videotaped some of the activity at the compound. Among the subjects of the surveillance were the vehicles, individuals, and structures associated with the compound. From this vantage point across the road, agents could see only the front and some of either side of the compound.

During a typical daytime shift, agents would see periodic movement of compound residence. For instance, several men might be seen going to and working on the structure next to the compound known as the pit. Routinely, women were seen carrying buckets into a field and dumping their contents. Although there were several vehicles at the compound, they would rarely leave, with the exception of the car which was driven by a compound member who was a contract mail carrier.

At night, there was even less activity observed. Agents might watch for hours without seeing any movement whatsoever. It appeared from surveillance that the guard shack was not manned and there were no armed sentries or patrols at the compound.

In late January 1993, I learned that our assignment at the house was to be extended. The focus of the operation was to be directed

at infiltrating the compound rather than merely observing it. From this point on, we were instructed to summarize the activities observed at the compound. We were to document and detail only those activities which were inconsistent with the routine noted by previous surveillance.

Over the next several weeks, at the instruction of our supervisors, we initiated contacts with Davidian members in an effort to get inside the compound. One day in early February 1993, these efforts were successful when Agent Rodriguez was invited inside the compound. Later that same day, I was also invited inside. Over the next several weeks, Agent Rodriguez had approximately seven occasions to enter the compound and I had one other occasion to enter it. I was also invited to shoot guns with Koresh.

On February 28, 1993, in the hours leading up to the planned raid, I was assigned to transport a team of ATF forward observers to a position near the compound. I was present in the surveillance house on the morning of the raid when Agent Rodriguez alerted ATF supervisors that the raid had been compromised.

After the decision was made to go forward with the raid, I was assigned to the residence next door to the surveillance house. In this house lived a family who worked at the ranch on which their house sat.

At about 9:30 a.m. on Sunday, February 28, ATF agents attempted to serve the search and arrest warrants at the compound. At the time the trailers pulled in, I heard what sounded like machine gun and heavy weapon fire at the compound. I moved the family to a closet in the back of their house to protect them from gunfire we were now receiving from the compound.

Following the cease-fire and withdrawal of ATF agents, the family was moved to safety. Myself and six other ATF agents maintained our position in the surveillance house. In the hours that followed, I helped to transport Davidian children safely from the area. These were the children Koresh released shortly after the cease-fire while early negotiations were underway.

From March 1993 until May 1993, I was assigned to the ATF intelligence unit located at the ATF command post, Waco, TX.

I would like to conclude by saying that during my career, I have had the occasion to be involved in two of the most significant law enforcement investigations of our times, being the Branch Davidian and Oklahoma City bombing investigations. I have witnessed firsthand the tragic loss of human life as a direct result of the actions of criminals with extremist views who have the unlawful weaponry to carry out their deadly agenda.

During these two incidents and many other investigations of violent criminals, I hope in some small way I have made this country a safer place for my family and yours to live. I would be pleased to answer any questions the committee may have.

The CHAIRMAN. Thank you, Agent Brzozowski.

Agent Guthrie, we will turn to you now.

STATEMENT OF ROGER GUTHRIE

Mr. GUTHRIE. Chairman Hatch and distinguished committee members, my name is Roger Guthrie and I am a special agent with the Bureau of Alcohol, Tobacco and Firearms. I have been em-

ployed as an ATF special agent for approximately 12 years. Prior to this, I served in the U.S. Army as a member of the First Ranger Battalion. I am currently assigned to the Detroit field division as the firearms instructor coordinator and as the Special Response Team team leader. I have had extensive training in SRT-type operations and as a forward observer, also commonly referred to as a sniper observer, dating back to 1978.

I would like to take this time to thank each of you for allowing me the opportunity to speak to you today. I am prepared to read a brief statement that is a synopsis of my involvement in the operation conducted near Waco, TX, in February 1993.

ATF Special Response Teams, formerly known as the Entry Control Teams, have been in existence since 1988. The SRT's consist of special agents who volunteer for this arduous duty and who are then hand-selected to attend the ATF basic training program. The SRT's are used for such tasks as high-risk warrant service, search warrant situations, witness protection, and security for high-risk undercover operations.

Though often misunderstood, tactical teams such as ATF SRT's are trained, equipped, and utilized to minimize the danger to all persons involved while maximizing the chance of having a successful operation. To sum it up, tactical teams save lives.

All well-organized tactical teams employ the use of specially-trained individuals who are trained to move into an operational area and provide decision makers with real-time intelligence. They also have the capability to provide precise covering fire through the use of specially equipped weapons systems. These individuals may be referred to as snipers, countersnipers, marksmen, or forward observers. Whatever their name, their job is highly specialized and significantly important to the successful completion of any tactical operation.

Sniper observers, by the virtue of their enhanced observational capabilities and surgically precise shooting skills, also save lives.

ATF forward observers are very well trained in all aspects of sniper operations. They complete a 2-week training school in addition to their ATF basic SRT school. This training is conducted at Fort McClellan, AL, which has excellent facilities that are conducive to training ATF forward observers in all their necessary disciplines.

My involvement in the investigation of David Koresh began as a result of my participation in the ATF forward observer program. After reviewing intelligence-related documents and materials and aerial photographs of the Branch Davidian compound, I made recommendations as to the placement of snipers and observers around the compound to support a dynamic entry or to support a siege of that location, whatever was later decided upon.

The forward observer program was relatively new to ATF at this time. The raid planners had not yet received formal instruction and training in how to fully utilize all the capabilities of forward observers. This primarily is to include their ability to gather real-time intelligence.

In February 1993, I was told to report to Fort Hood, TX, and prepare for the Branch Davidian operation. My partner, Larry Krisl, and I conducted rehearsals with other forward observers at Fort

Hood and also with the SRT teams that had been gathered there. We conducted a drive-by reconnaissance of the Branch Davidian compound several days prior to the scheduled date of the raid. We made recommendations to the raid planners relating to the placement, insertion time, and command and control of the forward observer teams during rehearsals conducted at Fort Hood. Other forward observers participating in the operation voiced similar recommendations during this time period.

On the morning of February 28, 1993, my partner and I occupied a position at the rear of the compound prior to the arrival of the SRT teams at the front of the compound. As the SRT teams exited the trailers, a tremendous amount of gunfire erupted from within the compound. During the initial gun battle, we fired at individuals identified as a threat to ourselves and to other agents. We remained in this position until a cease-fire was negotiated and all the agents were extracted from the area. We then occupied an alternate position at the rear of the Davidian compound.

At approximately 5:30 p.m. on the day of the raid, after being ordered to leave the area, my partner and I, and several other individuals were involved in a second gun battle with three members of the Branch Davidians. This occurred in a field northwest of the compound. As a result, one individual was killed, one was captured, and a third individual escaped and was captured several days later.

During the following days, my partner and I assisted the Hostage Rescue Team in setting up sniper observer positions at the rear of the Branch Davidian property. I remained on site in Waco for approximately 10 days following the initial raid and then returned to Detroit. I returned to Waco on April 19, 1993, with the rest of the Detroit SRT team and remained on site for an additional 3 weeks prior to returning to my field division.

In reflecting on the day of the raid, I now feel that David Koresh did not have a right to resist the efforts of ATF agents discharging their duties on that day. David Koresh could have and indeed should have argued the validity of that warrant in court and not by ambushing Federal agents assigned to execute the warrant. David Koresh orchestrated a cowardly and deadly ambush directed at ATF special agents. Within a short time, 4 agents were dead and another 20-plus agents were wounded.

For 51 days thereafter, David Koresh could have peaceably surrendered at any time. Instead, he again chose a cowardly solution by using women and children as his shields against law enforcement authorities. Over 80 men, women, and children died because David Koresh, in his last cowardly act of defiance, caused the compound to be set ablaze and then committed suicide.

In the aftermath of Waco, I feel that ATF continues to produce excellent results in the war against violent crime. ATF has an excellent reputation among State and local law enforcement agencies. I am very proud of that reputation that we have, and this is in terms of genuine assistance and cooperation that is lent by ATF.

The laws we are charged with enforcing are controversial and often invoke an emotional response from our citizenry. We do not have the luxury of choosing which laws we will enforce and which laws we will ignore. More importantly, we could not ignore viola-

tors because their investigation and/or arrest would be too difficult, too dangerous, or too controversial.

Many positive changes have resulted in the way we conduct business because of the lessons that we learned at Waco. I am confident that these changes have resulted in an ATF that is better equipped, trained, and organized to carry out our mission today than we were in February 1993. Thank you.

The CHAIRMAN. Thanks to all three of you.

If it is all right, we have caucuses to go to, so what I would like to do is defer questioning until we get back after those caucuses are through. That will give you a chance to have some lunch. We will report back here, then, if you can all three be in your seats here at 2:30. We have a vote at 2:15, but I think we can vote right up front and then get here by 2:30 and then we will start asking questions. We appreciate the testimony of each of you here today.

Senator BIDEN. Mr. Chairman.

The CHAIRMAN. Yes.

Senator BIDEN. I would just like to explain to the panel, I have to be in the Foreign Relations Committee at 2:30. If I am a little late coming back, it is not a lack of interest in what the panel has to say. I do have questions. I would not ask you to hold the panel if you are finished, but I do have questions if I am able to get back.

The CHAIRMAN. Thank you. We appreciate the testimony of all three of you. We appreciate the service that you give. We will look forward to having some questions for you at 2:30, and with that, we will recess until 2:30.

[Whereupon, at 1:17 p.m., a luncheon recess was taken to reconvene at 2:30 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. We will begin our afternoon session here. I just have a few questions for you. I appreciate your testimony very much.

Mr. Petrilli, let me just ask you a couple of things. You indicated that the statement you gave to the Waco review team, in that statement, you said that you "harbored reservations regarding the quality and timeliness of the intelligence provided in the investigation." Could you elaborate on that statement for us?

Mr. PETRILLI. Yes; I felt that, at the time that we were doing the preparation for these warrants, that we did not have a good control system for all of the intelligence, which today we have certainly improved that tremendously. But at the time, as a planner of the operation, I did not feel that all of the information was getting to us, that it was being properly processed, and that it could have been handled better. Obviously, later on through the review, that proved out to be true. I am very glad to say that today, that system would not exist.

The CHAIRMAN. As the team leader, you were one of the planners of the ATF raid.

Mr. PETRILLI. Yes, sir.

The CHAIRMAN. How can a good tactical plan be based on shoddy intelligence work?

Mr. PETRILLI. It should not be, sir.

The CHAIRMAN. And that was your disadvantage, you had bad intelligence?

Mr. PETRILLI. Absolutely. I think that the fact is that the plan was relatively good. Not only did we think it was good but the team members thought it was good and many of the experts have said that it had a reasonable chance of success.

The CHAIRMAN. What needed changes, if you can help the committee, if you had your way, would ensure that the failure to adequately perform intelligence collection and analysis will not reoccur in future incidents such as this?

Mr. PETRILLI. Actually, I think the changes that are necessary have taken place in recent time now. I think ATF has done an excellent job of improving their ability to manage intelligence. They have created a number of systems, including an intelligence response unit that can assist us on major cases. We have created other positions within our divisions, our intelligence officers within divisions, and within our Special Response Teams, we have created intelligence people. So I really think that we have done an awful lot to improve that.

The CHAIRMAN. The operational plan was predicated on the assumption that the Branch Davidians would be separated from their weapons, right?

Mr. PETRILLI. Yes, sir; that was the crux of it.

The CHAIRMAN. There was no contingency in the operational plan in the event that you agents were to be confronted with an ambush, right?

Mr. PETRILLI. That is incorrect, sir. There were some contingency plans. However, those contingencies, we admit, did not go far enough. They were discussed, but they did not go far enough in depth.

The CHAIRMAN. So they were not adequate contingencies?

Mr. PETRILLI. No; I do not believe they were. We felt they were at the time.

The CHAIRMAN. How could that have gone overlooked, in your opinion?

Mr. PETRILLI. I think the major problem, sir, is that in the history of law enforcement in the United States, we have never encountered a group that resisted law enforcement to the degree that the Branch Davidians did. We have certainly in law enforcement had resistance to lawful warrants but never have we encountered a group of this size that would resist us to the degree that they did.

It was not a question of three or four or a dozen Davidians that resisted us. Many, many—I certainly cannot answer the exact number, but bullets came out of almost every window in that structure at us throughout that gunfight. So law enforcement has never encountered something like that.

The CHAIRMAN. It was the first time that a religious group acted in this fashion, I take it?

Mr. PETRILLI. To this degree, sir.

The CHAIRMAN. To that degree?

Mr. PETRILLI. Yes.

The CHAIRMAN. Mr. Brzozowski, you explained the role in your opening testimony of the undercover operation in the house across

the street from the Branch Davidian compound at Waco. The undercover operation was 24 hours daily for only its first 2 weeks of operation. Then it was diminished to only a morning-to-night schedule. Finally, 11 days before the operation was to take place, the entire operation was shut down.

It is my understanding, and you correct me if I am wrong, that the most important intelligence information is the information that is closest in time to the raid. How do you reconcile those two notions?

Mr. BRZOZOWSKI. From my perspective as an agent there, we were assigned to do the 24-hour surveillance. We did that for the first 2 weeks until the emphasis was changed. Toward the end of the time when the warrant was going to be executed, we were to be removed from the location and that is what we were going to do until they decided they needed an undercover agent back in inside the compound and then we did that.

The CHAIRMAN. I see. Were the undercover agents briefed on the tactical plan?

Mr. BRZOZOWSKI. I did not attend any briefings on the tactical plan. On the night of the 27th, Agent Sarabyn informed me of my duties the following day during the execution of the warrant.

The CHAIRMAN. You did not attend. Were there any offered meetings on the tactical plan to you folks, to the undercover agents?

Mr. BRZOZOWSKI. No, sir.

The CHAIRMAN. That is what I wanted to establish.

Is it not true that many of the photographs that were taken from the undercover house were never even developed?

Mr. BRZOZOWSKI. That is my understanding. I do not have personal knowledge of that, but that is my understanding.

The CHAIRMAN. If that is true, what kind of an impact would that have on the planning of the operation?

Mr. BRZOZOWSKI. Certainly, I think, it would be a good idea to develop the film.

The CHAIRMAN. So it would have helped them?

Mr. BRZOZOWSKI. I am sorry?

The CHAIRMAN. It would have been helpful if you had that done or if they had at least looked at it in their planning operations?

Mr. BRZOZOWSKI. Again, I am not the tactical planner, but if we are producing some information or intelligence and taking the pictures and videos and whatnot, then certainly they should be developed.

The CHAIRMAN. It just makes sense.

Mr. BRZOZOWSKI. Yes, sir.

The CHAIRMAN. What are your thoughts on the termination and reinstatement of the two supervisors at Waco? That puts you on the spot, I know, but I would like to know what you think.

Mr. BRZOZOWSKI. That is a difficult question. I do not know all the reasons for what transpired for the rulings. I assume that the proper decision was made to reinstate them.

The CHAIRMAN. That was a tough question.

Mr. BRZOZOWSKI. Yes, sir.

The CHAIRMAN. And you answered it very diplomatically, is what I am saying.

Mr. BRZOZOWSKI. Yes, sir.

The CHAIRMAN. Mr. Guthrie, tell us the importance of having accurate and timely intelligence and what happens if that process fails in operations like you are used to operating in but especially in this Branch Davidian operation?

Mr. GUTHRIE. The need for developing intelligence is, as you asked my colleague here earlier, the closer the time is to the execution of the raid, the more critical the intelligence gathering can become. We call that basically gathering real-time intelligence. My specific area of responsibility prior to this raid would have been the collection of real-time intelligence.

However, putting this in the right time perspective, our program involving the forward observers and their use in gathering real-time intelligence was relatively new to ATF at the time. The raid planners, the individuals involved in making the decisions as far as planning at that time had not been properly trained in the use of that asset, fully trained in the use of that asset, as to what we could benefit the raid planners in gathering real-time intelligence just prior to the raid.

I think that now, if this were to occur again, any large-scale operation, our people have been instructed and schooled into the use of that asset, the forward observers, as their primary function is gathering real-time intelligence and feeding that back to the individuals making command decisions, involved in last-minute planning, things of that nature, and that could have impacted it. It was just unfortunate at the time that they were not fully aware of the capabilities of the forward observers.

The CHAIRMAN. Do you feel that, as the other two do, that changes have been effectuated and have been implemented since this debacle down there at Waco?

Mr. GUTHRIE. There has been a magnitude of changes involving the interaction between the forward observers and individuals in command and control of an operation. Also, not only the gathering of the intelligence with the use of the forward observers but where that intelligence goes to after it is gathered, and I am specifically referring to how it is disseminated and analyzed.

There have been several new steps implemented since Waco to analyze and disseminate the information collected by the forward observers or from, for that matter, any of our intelligence gathering resources to, like I said, analyze and disseminate the information up the chain so it ensures that it reaches the individuals in command and control of the operation.

The CHAIRMAN. I just want to congratulate each of you for the work that you have done, for the testimony you have brought here today. You folks did the job on the ground. You did what you were asked to do. It was not your fault that the intelligence was not there, that the planning was not as good as it should have been, that some of the basic procedures were not implemented the way they should have been implemented.

But we appreciate having your testimony today, and I think it has been dramatic for our folks out there in the rest of the country to see just what it is like to be an agent on the ground without the appropriate backup, the appropriate intelligence, the appropriate planning, to have to go in and face some of these problems with,

as you have said, a group that certainly nobody expected to be as tough and as vicious as really it turned out to be.

So I basically just want to congratulate you for being who you are and for what you have done and for trying to do your job. You have been candid with us here today. You have acknowledged that there are things that the agency needs to do and, frankly, we are now going to go to the next panel to see if the agency is actually doing what needs to be done. So we want to thank you and we will let you go. Thanks a million.

Mr. PETRILLI. Thank you, sir.

Mr. BRZOZOWSKI. Thank you, sir.

Mr. GUTHRIE. Thank you, sir.

The CHAIRMAN. Let me just note for the record that Senator Biden is in Foreign Relations and he will try and be back, but he does have that dual responsibility. I want everybody to know that that is why he is not here right now. But thank you so much. It is good to have you here.

We are going to recess for just a few minutes before we put our last panel on. We will recess for a few minutes. Thank you.

[Recess.]

The CHAIRMAN. I think we will begin again. We have the Honorable Ronald Noble, Under Secretary for Enforcement of the U.S. Department of Treasury here.

Thus far, we have heard from experts and agents. They have described problems in the manner in which the investigation of David Koresh and the Davidians was performed. More pointedly, they have discussed pitfalls in the training of agents and supervisors, as well as organizational problems. This is especially so in the areas of intelligence gathering and information collection.

We now turn to what corrective measures are being taken by the Department of Treasury and the Bureau of Alcohol, Tobacco and Firearms. This brings us to the fourth and final panel of the day, Ron Noble and John Magaw.

Mr. Noble is the Under Secretary for Enforcement at Treasury. Accompanying the Under Secretary, when he gets here, is John Magaw, the Director of the ATF. At this time, we want to welcome you, Mr. Noble. We will welcome Mr. Magaw when he gets here. We want to invite you to share with us what steps have been taken to avoid another Waco and what have you done to remedy the errors elucidated by this tragedy that we have heard of both in the House hearings and today.

Now, you will notice that we have not gone through all the factual matters again. The House did a good job on that and we do not see any reason to rehash all of that. But we are concerned about what steps are being taken or have been and will be taken to resolve this type of problems so they do not happen again.

That is why your testimony is so important here, since you lead in Treasury over ATF, and we are really looking forward to hearing what you have to say about it. We will turn to you at this time.

PANEL CONSISTING OF THE HONORABLE RONALD K. NOBLE, UNDER SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC; AND THE HONORABLE JOHN MAGAW, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, WASHINGTON, DC

STATEMENT OF RONALD K. NOBLE

Mr. NOBLE. Thank you, Mr. Chairman. I have a longer statement that I would like to submit for the record, with the Chairman's position.

The CHAIRMAN. Without objection, we will put all full statements in the record.

Mr. NOBLE. Thank you. Mr. Chairman, as you indicated in your opening remarks, four ATF agents died on February 28, 1993, in the Branch Davidian compound at Waco, Conway C. LaBleu, Todd W. McKeethan, Robert J. Williams, and Steven D. Willis. Because of their deaths, as well as the deaths of the Branch Davidians in the events that followed, the importance of how Treasury and ATF responded cannot be overstated, for Waco and its aftermath have drawn the attention not only of this country and this Congress but also of the entire world.

Following the tragedy at Waco, at Treasury, the Government worked the way it is supposed to work. The Treasury Department immediately conducted a full-scale review of the events and the issues involved in the ATF raid at Waco. We made our review public by publishing a report that has come to be called the Blue Book. The report was candid, comprehensive, and accurate. Among other findings, the review bluntly exposed misstatements made by senior agents and Bureau officials concerning what actually happened. Following the report, Treasury and ATF have aggressively instituted reforms. In short, we made mistakes, we identified them, we aired them publicly, and we responded to them comprehensively.

Today, we can help and already have helped to restore confidence in this country's law enforcement officials. We must recognize that ATF has learned the lessons of Waco. We must recognize that steps have been taken to correct internal organizational flaws, and we must recognize that ATF makes a singular and vital contribution to Federal law enforcement. Together, we can shift the public focus from a single tragic aberration to ATF's and other Federal law enforcement agencies many daily successes that help preserve the rule of law in our Nation.

Indeed, this administration would oppose moving any part of ATF out of Treasury. Major State and local law enforcement agencies agree that ATF plays and should continue to play a leading role in the Federal Government's fight against violent crime.

After the events at Waco, President Clinton directed that Treasury and Justice conduct rigorous and thorough examinations of what caused the loss of law enforcement and civilian lives. Secretary Bentsen designated me to lead the Treasury Department's review. In my fuller version of the oral remarks, what we found in the review have been set forth clearly and completely, and with your permission, I would like to incorporate those by reference.

The CHAIRMAN. Without question, we will do that.

Mr. NOBLE. Let me talk about what has changed since the report was released over 2 years ago. I will focus on the changes made at and by Treasury. When Director Magaw arrives, he will focus on the changes he has spearheaded at ATF.

First, the Department of the Treasury ensured that new leadership was put in place at ATF. Two years ago, ATF gained a new Director when Secretary Bentsen appointed John Magaw as Director of ATF. Thereafter, John Magaw, and I am sure that when you hear from him again, you will be impressed as I have been with the numerous and significant changes he has made to reform, modernize, and improve ATF's intelligence function.

Director Magaw also made significant personnel changes that were recommended and later approved by the Treasury Department. It led to a new Associate Director for Law Enforcement, a new Deputy Associate Director for Law Enforcement, a new special agent in charge of the Houston office, two new assistant special agents in charge in the Houston office, and a new chief of intelligence.

The Waco report stated the principle that supervisors should be removed from positions of discretionary authority when their judgment or integrity cannot be trusted by those who have to rely on those qualities. In the changes that have been made in ATF's leadership, this principle has been fully vindicated.

Second, I issued a directive in August 1993 requiring that the Office of Enforcement be informed of any significant operational matters that affect any of the Bureau's missions, including major high-risk law enforcement operations. You might recall from former Director Stephen Higgins' testimony that in his 10 years as Director of ATF, he was never required to have an operation approved by main Treasury. That now has changed.

Third, in March 1995, I instituted new guidelines for sensitive undercover operations. ATF, Customs, IRS Criminal Investigation Division, and Secret Service now have sensitive undercover operations reviewed by a multi-agency committee that includes representatives from all Treasury enforcement bureaus and, most significantly, from the Department of Justice's Criminal Division, as well.

Fourth, we have improved oversight, including formal and informal communication between Treasury and its law enforcement bureaus. I established a weekly meeting between the Under Secretary's Office and the heads of each of the Treasury enforcement bureaus and key offices. The bureau heads, as we call them, also meet regularly with the Deputy Secretary and with the Secretary of the Treasury to discuss major events and initiatives.

Based on these reforms, an operation of the scope and complexity of the Waco raid would never be contemplated by one Treasury bureau alone. It would come to the attention of a variety of law enforcement authorities, as well as my office, well in advance of the planned action. Director Magaw has emphasized and reemphasized this point over the last 2 years.

You might recall from previous testimony that main Treasury first learned about the planned raid near Waco, TX, on February 26, 1993, the very day that the World Trade Center bombing occurred.

Fifth, I reactivated the Treasury Enforcement Council. The Treasury Enforcement Council consists of all the bureau heads and reviews policies and tackles problems through cross-bureau working groups. It is the counterpart of the Justice Department's Office of Investigative Agency Priorities. The TEC recently completed an 11-month review of the use of force guidelines for all Treasury enforcement bureaus. The final guidelines became the subject of discussion with the Justice Department, and the two departments, for the first time, arrived at a uniform set of guidelines just recently.

Sixth, we have dramatically improved coordination among Federal law enforcement authorities. Attorney General Reno has instituted regular meetings for all Justice and Treasury law enforcement bureau heads. Secretary Rubin is the first Treasury Secretary to participate in these meetings with the Attorney General. Furthermore, Deputy Attorney General Gorelick, Deputy Secretary Summers, and I also meet and talk regularly to ensure proper coordination and cooperation.

My office communicates regularly with the Justice Department on operations, such as family clinic shootings, Unabomber assaults, White House attacks, the Oklahoma City bombing investigation, and on other issues of mutual importance.

All of law enforcement has learned from the events at Waco, not only ATF, not only the FBI. Treasury and ATF have shared the painful lessons learned at Waco with the world by circulating Treasury's "Blue Book" to the Interpol offices of over 180 countries and by giving presentations to law enforcement groups in the United States and internationally.

Having discussed this matter with my counterparts throughout the world for almost 3 years, I can assure you that the tragedy at Waco was an extraordinarily unusual occurrence. Indeed, the aberrant errors at Waco, which occurred almost 3 years ago, should not stand in the way of your full support for this agency and its implementation of the vital missions that Congress has defined for it.

ATF is a unique agency. Agents who risk their lives each and every day enforcing the law against the country's most dangerous criminals, bombers, and arsonists work side by side with officials who are responsible for enforcing regulatory and tax statutes governing alcohol, tobacco, firearms, and explosives products. ATF officials are dedicated to the fair and efficient collection of nearly \$14 billion of revenue annually.

Treasury's philosophy of enforcement, whether at Customs in the trade compliance area, or the Financial Crimes Enforcement Network working with other Treasury bureaus in the financial transactions area, or ATF in the firearms and explosives area, is to try to deter and prevent crime by combining civil and criminal authorities and strategies in innovative ways.

The more prevention and deterrence through education, cooperative industry-agency strategies, and targeted regulatory enforcement, the less needed for launching criminal investigations. While this approach is not always possible, it is a crucial dimension of the way ATF approaches firearms violations and an important aspect of ATF's location in the Treasury Department.

Finally, as we evaluate ATF, we should also focus on what it is doing today and not simply on what happened almost 3 years ago at Waco.

Mr. Chairman and members of the committee, I look forward to answering your questions.

[The prepared statement of Mr. Noble follows:]

PREPARED STATEMENT OF RONALD K. NOBLE

Mr. Chairman and Distinguished Members of the Committee, four ATF agents died in the Branch Davidian compound at Waco—Conway C. LeBleu, Todd W. McKeehan, Robert J. Williams, and Steven D. Willis. Because of their deaths, as well as the deaths of Branch Davidians in the events that followed, the importance of how Treasury and ATF responded cannot be overstated, for Waco and its aftermath has drawn the attention not only of this country but also of the entire world. At Treasury, in the aftermath of the tragedy at Waco, government worked the way it is supposed to. The Treasury Department immediately conducted a full scale review of the events and the issues involved in the ATF raid at Waco. The Treasury Department made its review public, by publishing a report that has come to be called the "Blue Book." The report was candid, comprehensive, and accurate. Among other findings, the review bluntly exposed misstatements made by senior agents and Bureau officials concerning what actually happened. This exposure prevented the public from being deceived.

Guided by the Treasury examination and full public disclosure of the problems it uncovered, Treasury and ATF have aggressively made reforms. As a result, Treasury and ATF have made tremendous strides forward while preserving constitutional protections and respecting public concerns.

In short, we made mistakes, we identified them, we aired them publicly, and we responded to them comprehensively.

We at Treasury and at ATF have testified about the events of Waco before Congress on numerous prior occasions:

On March 10, 1993, in an Executive Session of House Appropriations Subcommittee on Treasury, Postal Service, and General Government. (FY '94 Appropriations; Waco discussed).

On April 2, 1993, before the Senate Treasury, Postal Service and General Government Subcommittee.

On April 22, 1993, before the House Ways and Means Subcommittee on Oversight.

On April 28, 1993, before the House Judiciary Committee. (Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas).

On June 9–10, 1993, before the House Appropriations Subcommittee on Treasury, Postal, and General Government. (Waco Oversight).

On October 22, 1993, before the House Appropriation Subcommittee on Treasury, Postal and General Government (Waco Follow-up).

On July 19–August 1, 1995, before the House Judiciary Committee, Crime Subcommittee; House Government Reform and Oversight Committee, National Security, International Affairs, and Criminal Justice Subcommittee (Joint hearings on Waco).

I, the Director of ATF, and our respective staffs have also provided numerous member and staff briefings.

Today, if you agree, you can help to restore confidence in this country's law enforcement officials, by recognizing that Treasury and ATF have identified the problems manifested in the tragedy at Waco and have addressed them, and by recognizing ATF's singular and vital contributions to federal law enforcement. Together we can shift the public focus from a single tragic aberration to ATF's and other federal law enforcement agencies' many daily successes that help preserve the rule of law in our nation. Indeed, it is the view of this Administration and major state and local enforcement organizations that ATF plays and should continue to play a leading role in the federal government's fight against violent crime.

PART I: THE TREASURY REPORT AND ITS ASSESSMENT

After the failed raid, the deaths of the four ATF agents, and the tragic fire at Waco, President Clinton directed the Treasury and Justice Departments to conduct vigorous and thorough examinations of what had led to the loss of law enforcement and civilian lives.

Secretary Bentsen designated me to lead the Treasury Department's review. He demanded that the investigation be honest, uncompromising, and comprehensive.

Secretary Bentsen appointed three independent reviewers to provide an assessment of the Treasury Department's investigation and report on ATF's investigation of David Koresh and raid of his compound on February 28, 1993. The independent reviewers were Pulitzer Prize winning journalist Edwin O. Guthman, Henry Ruth, a former Chief Watergate Prosecutor, and Chief Willie Williams of the Los Angeles City Police Department. In letters to Secretary Bentsen in 1993, the reviewers were unanimous in their praise of the Treasury Department's candid and comprehensive investigation and report. I would ask the committee to include in the record the letters from the three reviewers to Secretary Bentsen stating their support for the review's findings and conclusions.

The uniformly positive assessments of the reviewers have been heard and echoed by the Treasury Department's independent Inspector General's office, by Members of Treasury's Congressional oversight committees from both sides of the aisle and by major news publications throughout this country.

PART II: MAJOR FINDINGS IN TREASURY'S REPORT

Although this hearing focuses primarily on one aspect of the Waco events—intelligence operations—I would like to review briefly with you all the key findings of the Treasury review. They place the discussion of intelligence issues in context.

First, I would like to emphasize that the review concluded that the agents who participated in the attempt to serve the search and arrest warrants were brave, loyal and disciplined following David Koresh's murderous ambush. They risked their own lives to save one another and to reduce the chance that innocent Davidians would be killed. (Review at 96–101.)

The Treasury report also concluded that ATF, at the request of the local sheriff, properly initiated an investigation into David Koresh and his followers based on information provided by the sheriff. (Review at 120–121.) This investigation was predicated on evidence that federal criminal firearms and explosives laws were being violated. (Review at 122–132.) It was not based on Koresh's religious beliefs. (Review at 121.)

The Treasury report concluded that there was probable cause to believe that people inside the Branch Davidian compound were manufacturing illegal machine guns and explosive devices—as did the magistrate-judge who reviewed and approved the warrant. (Review at 122–124.) No facts have emerged that undermine that conclusion.

Indeed, after the April 19 fire, the Texas Rangers recovered 48 illegal machine guns, illegal explosive devices, and illegal silencers, along with hundreds of thousands of rounds of ammunition, from the compound. (Review at 127–132.)

Since the Treasury report was issued, eleven Branch Davidians were brought to trial and eight were convicted of the very firearms offenses that ATF investigated. Most have been sentenced to in excess of 30 years incarceration. At that trial, none of the defense lawyers challenged the validity of the search warrant. One of those defense lawyers testified during the House Waco hearings that the warrant was legally sufficient.

I would like to emphasize that ATF's investigation was predicated on evidence that federal criminal firearms and explosives laws were being violated. It was not based on Koresh's religious beliefs.

ATF began its investigation of Koresh after receiving complaints from the McLennan County Sheriff's Department in May 1992. The sheriff's office was contacted by a United Parcel Service driver concerned about suspicious parcels, including inert grenade casings and a substantial quantity of black powder, that had been received by certain persons at the Branch Davidian compound. As the report stated, "Because the residents of the compound were constructing what appeared to be a barracks-type cinder-block structure, had buried a school bus to serve as both a firing range and a bunker, and apparently were stockpiling arms and other weapons, Deputy Weyenberg asked ATF to investigate." (Review at 17.)

Before opening a formal investigative file, the ATF case agent debriefed the local officials, interviewed gun dealers, and searched the National Firearms Registration and Transfer Record. Based on this information he made a preliminary determination that violations of federal law might be occurring. This was not only proper; ATF would have been irresponsible had it not initiated an investigation.

The review examined, considered and rejected suggestions made by some that the religious beliefs of Koresh and his followers, or Koresh's sexual conduct with minors, triggered ATF's investigation of Koresh. The report stated, "while some have suggested that ATF targeted Koresh because of his religious beliefs and life-style, the review has found no evidence of any such motivation." (Review at 121.) The review also challenged those who believe that the government should be deterred from in-

vestigating potential unlawful activity because that activity is entangled with religious belief and practice. The report stated: "A review of the investigation makes it clear that the ATF inquiry into the activities of Koresh and his followers was consistent with the agency's Congressional mandate to enforce federal laws regulating the possession and manufacture of automatic weapons and explosive devices. Indeed, ATF would have been remiss if it had permitted considerations of religious freedom to insulate the Branch Davidians from such an investigation." (Review at 120.)

Illegal conduct cannot be excused or ignored because the group engaging in that conduct has religious beliefs or affiliations, or attempts to identify illegal conduct with such beliefs or affiliations. Nor can violations of law be ignored or excused when committed by groups with survivalist ideologies, or by violent tax protesters, "county supremacy" groups, or so-called organized or unorganized militia or paramilitary groups with extreme second amendment ideologies.

On the contrary, it is essential to the American public that public safety be ensured and that all violations of firearms and explosives laws be investigated impartially, whether the investigation leads to the inner cities, mountain strongholds, or religious communities.

With respect to the probable cause determination, I refer the Committee to pages 17 through 35 and 119 through 135 of the Treasury report, which set forth the facts developed by ATF's case agent that established probable cause. In addition, the Treasury report includes the analysis of two non-Treasury weapons experts who confirmed that ATF's case agent, the U.S. Attorney's Office, and Judge Green had ample evidence to support searching the compound for evidence of the manufacture of illegal machine guns. Two non-Treasury explosives experts concluded that the evidence gathered by ATF established probable cause to believe that illegal explosives were being manufactured. Not only was there probable cause to search for illegal weapons, such weapons were actually found, and tragically and unlawfully used against federal agents possessing lawful search and arrest warrants.

Intelligence operation and raid planning

In order to better assess the operations and intelligence aspects of the Waco investigation and operation, the Treasury review team consulted with ten tactical operations, intelligence, firearms, and explosives experts. They provided independent reports that are appended to the Treasury review in the Blue Book. (Review at B-3-B-133.)

The Treasury Department review team and the experts we consulted all concluded that ATF's raid planning was seriously flawed. Two years ago the Treasury Blue Book report stated that:

First, intelligence-system flaws, including an improperly conducted undercover operation, seriously compromised the planning for warrant service. (Review at 51-54; 133-148.)

Second, because of the flawed intelligence gathering and processing system, the planners did not give sufficient attention to other options, such as, trying to arrest Koresh away from the compound (Review at 134-140.)

While there is no such thing as a perfect raid plan and there were definite flaws in ATF's planning process, the review's four tactical experts who addressed this issue concluded that the plan had a reasonable chance of success if all of the planners' major factual assumptions had been correct. (Review at B-9, B-77, B-104, B-131.)

Third, ATF should have consulted with experts in order to better understand Koresh's likely response to different law enforcement options (Review at 141-142.).

Fourth, the planners did not develop a meaningful contingency plan. (Review at 148-151.)

Fifth, the Treasury report found that the Treasury Department in Washington, D.C. had not in the past nor at the time of the raid required sufficient advance notice of significant enforcement operations to exercise meaningfully its oversight of these operations. (Review at 180.) Nevertheless, when informed of the plan in this case, the Office of Enforcement stopped the operation until ATF Director Higgins gave certain personal assurances that the raid was necessary and that it would take place under conditions of surprise and that it would not go forward if things looked suspicious or unusual. (Review at 75-76.)

Sixth, the report concluded that the raid should not have gone forward once ATF learned that Koresh knew that ATF was coming 45 minutes in advance of the raid. The report found that the raid commanders failed to appreciate the significance of the information provided by the undercover agent on the morning of the raid and the dangers of proceeding when the element of surprise was lost and the Davidians' conduct was not as planned. (Review at 165-175.)

Seventh, the report stated that the flawed decision to go forward was not solely a question of individual responsibility on the part of the raid planners. It was also the result of serious deficiencies in the intelligence gathering and processing structure, poor planning and personnel decisions, and a general failure of ATF management to check the momentum of the operation as the circumstances demanded. (Review at 133-156; 165-175.)

The report did not take a position on what plan should have been followed, whether a siege, a raid or dynamic entry, apprehension of David Koresh off the compound, or some other approach or combination of approaches. In this regard, the report concluded that the plan used by ATF was based on inadequate intelligence; without adequate intelligence it was impossible to determine the best approach in hindsight. Two years after the report was completed, it remains impossible to retroactively determine the outcome of an alternative plan.

From a policy perspective, one possible conclusion to be drawn from this section of the review is that there may be special considerations in selecting a law enforcement strategy when dealing with crimes by religious or ideologically identified groups that are co-located with significant weapons and who may be willing to use violence against law enforcement and/or themselves. Again, this is a consideration of how best to enforce the law, not whether to do so. The loss of four ATF agents at the Branch Davidian compound was unacceptable. Law enforcement must therefore take a hard look at approaches to enforcing the law against groups that are considered unconventional or that may adopt unconventional responses. Other approaches—which could include but not necessarily be limited to open discussions, isolation of the leader, or siege—must be considered in each case, before resorting to a dynamic entry.

Treasury Department bureaus have undertaken enforcement actions against members of religious or ideologically identified groups twice since Waco.

On July 27, 1994, the Roanoke, Virginia ATF office arrested two members and associates of a proclaimed militia organization known as the Blue Ridge Hunt Club. Three other persons were eventually arrested. All were charged with conspiracy, possession of unregistered silencers, obliterating serial numbers, and straw purchases of firearms. The group was involved with a plan to burglarize the National Guard Armory in Pulaski, Virginia, in order to obtain machine guns and other small arms for the group. The plan included the possible killing of police officers, the bombing of power plants, and the creation of diversions in order to slow police response. Because the organization was not co-located in an armed compound, the danger to law enforcement was less than at Waco. ATF successfully arrested one member at his home and another during a traffic stop away from his home.

In another instance, on June 3, 1994, the IRS restored the tax-exempt status of the Church Universal and Triumphant, in return for which the church, headquartered on a 28,000-acre ranch near Corwin, Montana, agreed to stop stockpiling military style weapons, and divest itself of firearms, including two armored personnel carriers and thousands of rounds of ammunition. Under the agreement, the rights of individuals other than those convicted of a felony to own firearms are unrestricted.

These cases demonstrate that, when confronted with religious or ideologically identified groups involved with illegal weapons, Treasury bureaus are seeking solutions that enforce the law, minimize the risk to law enforcement, and respect constitutional requirements.

Responsible, restrained, and innovative law enforcement is not the full answer to the problems posed by armed groups such as the Branch Davidians. Congress, religious scholars, political scientists, and others must also give consideration to the causes and prevention of the amassing of illegal arsenals and the turning of those weapons on law enforcement, other government representatives, or one another. The Law Enforcement Steering Committee, composed of the Federal Law Enforcement Officer's Association, Fraternal Order of Police, National Association of Police Organizations, International Brotherhood of Police Officers' Organizations, Police Executive Research Forum, Police Foundation, National Organization of Black Law Enforcement Executives, National Troopers' Coalition, and the Major City Chiefs, in its July 14, 1995 letter to members of Congress identified some of the relevant areas of inquiry: the ease with which potentially violent groups amass weapons; the amassing of weapons and the threat they generate; weapons are being stockpiled for a purpose, what is it?; the danger of internal terrorism caused by the activities of arsenal gathering groups.

Last, the Treasury review uncovered and reported disturbing evidence of misleading statements made by the raid commanders and ATF officials. (Review at 193-210). By contrast rank and file agents stepped forward during the Treasury review's investigation, and told the truth about what happened. Their accounts formed the

basis for much of the review's analysis and criticisms of the agency. The willingness of agents to reveal the truth and correct mistakes—even if it put them at odds with their supervisors—speaks to the fundamental integrity and decency of rank and file agents at ATF.

The Blue Book's conclusions drew upon and incorporated findings by the independent experts whose reports are appended to the Treasury report. These experts, and a key finding of each, are listed below.

Commander George Morrison, a 37 year veteran with the Los Angeles Police Department, with extensive experience planning and executing tactical operations stated: "The volume of investigations and the expansion of missions indicates the need for a top level strategy session to insure that the B.A.T.F. organizational structure can control the activities of the field agents. The Bureau's activities, expectations and daily performance of personnel appear to have exceeded the ability of the existing management and organization structure to properly audit, inspect, supervise and manage. There is an immediate need to develop and implement changes in organizational structure, strategy and tactics, investigation case management, logistics and accountability charting with B.A.T.F." (B-87, B-90).

Deputy Chief John Murphy and Lieutenant Robert Sobocienski from the New York City Police Department, the commanding officer and a leading line officer in the department's special operations division respectively. Deputy Chief Murphy stated: "The Bureau must address the substantial damage done to its organization and, in particular, to the morale of its agents. The aftermath—from the many avenues and aspects of self-inspection and examination, from the extraordinary media attention and coverage, [and] from the interest of the citizenry throughout the country—mandates a complete and thorough reorganization with the objectives of improving delivery of day-to-day operations and insuring that such an occurrence can never happen again." (B-107). Lieutenant Sobocienski stated: "To my knowledge this was an unprecedented event. Their [ATF's] wish and mine is that lessons can be learned from this tragic incident and that the mistakes made will not be repeated in the future. The events in Waco should bring about a change in philosophy and create interaction between federal, state and local law enforcement and encourage the sharing of ideas, equipment and training which will be beneficial to all." (B-133).

Captain John A. Kolman, retired from the Los Angeles County Sheriff's Department, who planned and carried out numerous tactical operations in his 23 years with the department and is a founder and director of the national tactical officers association. "In spite of extensive planning and preparation by well-intentioned, experienced agents, success was not achieved at the Branch Davidian Compound. It eluded them, not because of a lack of ability of resources, but rather deficiencies in policy and procedure, which were exposed by the magnitude of the situation. Hopefully, the results of this and other inquiries will provide enlightened guidance, rather than restrictive policies and procedures." (B-38, B-79).

Colonel Rod Paschell, a retired commander of the U.S. Army First Special Forces Group, and now affiliated with the Office of International Criminal Justice at the University of Illinois at Chicago. "The disastrous outcome at Waco could have happened anywhere and can reoccur at any time. The Treasury Department, facing trends indicating a future higher incidence rate for these types of law enforcement actions, cannot assume an improved performance in coming, similar operations and should implement changes. The Department should institute immediate, interim and long term measures to increase its capacity for the safe and professional execution of hazardous operations." (B-109)

Wade Ishimoto, a retired Special Forces Intelligence Officer, who is currently a manager of Sandia National Laboratories, Albuquerque, New Mexico. "I submit that it is only through sound policy, supported by additional reference (i.e., procedural) materials, and thorough training that the tragedy which befell ATF at Waco can be prevented in the future. These focus on system fixes rather than individual actions along with the development of processes which provide a sound foundation for operational actions." (B-28)

PART III: TWO YEARS OF TREASURY AND ATF REFORMS

What has changed since the report was released?

I will focus on the changes made at and by Treasury. Director Magaw will focus on the changes he has spearheaded at ATF.

First, Treasury ensured that new leadership was put in place at ATF. Two years ago, ATF gained a new Director, a new Associate Director for Law Enforcement, a new Deputy Associate Director for Law Enforcement, a new Special Agent in charge in the Houston Office, two new Assistant Special Agents in charge in the Houston office, and a new Chief of Intelligence. In other words, ATF gained an entirely new

management team at headquarters as well as replacement at the local level in Texas.

Director Higgins announced his intention to retire shortly before publication of the Waco review and without reading the Treasury report. Secretary Bentsen selected John Magaw, then Director of the Secret Service to become the new ATF director. John Magaw has been an outstanding director of ATF. He has revitalized ATF in many areas, from major crime initiatives, to communication with industry, to internal management practices, to intelligence and training. I am confident you will be particularly impressed, as I have been, with the numerous and significant changes he has made to reform, modernize, and improve ATF's intelligence function.

The Waco report stated the principle that supervisors should be removed from positions of discretionary authority when their judgment or integrity cannot be in ATF's leadership, this principle has been fully vindicated.

After issuing the Waco report, Secretary Bentsen placed five ATF officials on administrative leave, pending a determination by ATF's new leadership as to what personnel actions should be taken. Three officials retired rather than challenge the report's findings. One accepted a demotion in light of the report's findings. Two supervisors were removed for misconduct. Eventually they appealed the firing and ultimately agreed to accept non-agent positions in which they have no authority to carry guns or badges, and have no law enforcement responsibilities. ATF Director Magaw believed, and I concur, that it was in the best interest of his bureau that ATF settle with them to avoid the possibility that the Merit Systems Protection Board would later reinstate them with guns and badges despite the validity of the report's findings.

Second, I issued a directive in August, 1993, requiring that the Office of Enforcement be informed of any significant operational matters that affect any of the bureaus' missions, including major, high-risk law enforcement operations. Such instances are of course exceptions. Ordinarily, operational matters are the domain of law enforcement bureau heads. The job of Treasury is to ensure that the bureaus have strong leadership and high standards, institute proper training, are supported with adequate resources, and enforce the laws impartially.

Third, in March, 1995, I instituted new guidelines for sensitive undercover operations. ATF, Customs, IRS-CID, and Secret Service now have all undercover operations reviewed by a multi-agency committee to ensure maximum planning and oversight. The multi-agency committee includes not only representatives from all Treasury Enforcement bureaus, but also representatives from the Department of Justice's Criminal Division. This procedural safeguard shows the increased oversight by Treasury officials over the most sensitive and dangerous law enforcement operations of the bureau. Indeed, had the undercover guidelines been in place in 1992 and early 1993, the investigation of Koresh would have come under close scrutiny by a sizable group of agents and lawyers from a broad spectrum of enforcement agencies.

Fourth, we have improved oversight, including formal and informal communications between Treasury and its law enforcement bureaus. I established a weekly meeting between the Under Secretary's office and the heads of each of the Treasury enforcement bureaus and key offices. The bureau heads also meet regularly with the Deputy Secretary and with the Secretary to discuss major events and initiatives.

Based on these reforms, an operation of the scope and complexity of the Waco raid would never be contemplated by one bureau alone. It would come to the attention of a variety of law enforcement authorities, as well as my office, well in advance of the planned action.

Fifth, to maintain the highest possible Treasury-wide standards while fulfilling our bureau missions, I reactivated the Treasury Enforcement Council (TEC). The TEC consists of all the bureau heads, and reviews policies and tackles problems through cross-bureau working groups. It is the counterpart of the Justice Department's Office of Investigative Agency Priorities (OIAP). The TEC law enforcement working group recently completed an eleven month review of the use of force guidelines for all Treasury enforcement bureaus. The final guidelines became the subject of discussion with the Justice Department, and the two departments for the first time arrived at a uniform set of guidelines. The TEC is now focusing on reviewing bureau policies concerning the use of paid informants.

Based on this record of oversight and ongoing policy reviews in which the bureaus participate, I am proud to say that comprehensive and honest self-examination has become a hallmark of the Administration's tenure at Treasury Enforcement. The Waco review, the Tax Refund Fraud study, and the White House Security Review demonstrate that Treasury is able as necessary to conduct comprehensive internal reviews and to include distinguished private, voluntary advisors and consultants in

the process. Self-examination in the sunshine has made Treasury and its enforcement bureaus stronger and healthier.

Sixth, we have dramatically improved coordination among federal law enforcement authorities. Law enforcement problems today are complex, as the case of David Koresh exemplifies, and demand high levels of cooperation between federal law enforcement agencies. We have significantly increased coordination at all levels with the Department of Justice. Attorney General Reno has instituted regular meetings for all Justice and Treasury law enforcement bureau heads. Deputy Attorney General Gorelick, Deputy Secretary Summers and I also meet and talk regularly. My office communicates regularly with the Justice Department on operations, such as during the aftermath of the Oklahoma city bombing, and on issues of mutual importance.

PART IV: ATF'S MISSION IN TREASURY AND THE FIGHT AGAINST VIOLENT CRIME

All of law enforcement has learned from the events at Waco. ATF itself has emerged a stronger, more effective, and efficient agency as a result of the Treasury Waco review and Director John Magaw's leadership. The aberrant errors at Waco, which occurred almost three years ago, should not stand in the way of your full support for this agency and its implementation of the vital missions that congress has defined for it.

ATF is a unique agency. Agents who risk their lives each and every day enforcing the law against the country's most dangerous criminals, bombers, and arsonists work side by side with officials who are responsible for enforcing regulatory and tax statutes governing alcohol, tobacco, firearms, and explosives products. ATF officials are dedicated to the fair and efficient collection of nearly \$13 billion of revenues.

ATF's approach to law enforcement is uniquely valuable in several ways: it uses a variety of civil and criminal enforcement tools to prevent, deter, and detect violations of law—rather than only making criminal cases; as a fundamental part of its mission it cooperates with and supports state and local law enforcement; and its co-operates fully with other federal law enforcement agencies.

Treasury's philosophy of enforcement—whether at Customs in the trade compliance area, or the Financial Crimes Enforcement Network working with other Treasury bureaus in the financial transactions area, or ATF in the firearms and explosives area—is to try to deter and prevent crime by combining civil and criminal authorities and strategies in innovative ways. The more prevention and deterrence through education, cooperative industry-agency strategies, and targeted regulatory enforcement, the less need for launching criminal investigations. While this approach is not always possible—it would not have been with David Koresh—it is a crucial dimension of the way ATF approaches firearms violations, and an important aspect of ATF's location in Treasury.

A major example of this approach is ATF's mission against illegal gun trafficking. ATF is required to inspect Federal Firearms Licensees, or FFLs, but there are almost 200,000 FFLs in the country, far too many for ATF to inspect over a reasonable period of time. Only a small percentage of these licensees is likely to be the source of guns that end up in the hands of gangs, narcotics traffickers, and juveniles, and an even smaller number actually engage in criminal activity. Rather than relying solely on criminal investigative powers in addressing gun trafficking problems, ATF can use a range of regulatory and educational strategies. For instance, it can work with FFLs to prevent thefts and it can trace firearms used in crimes, and use the intelligence as a way to prioritize its annual inspections. Regulatory and deterrent strategies such as these are possible only because ATF's tax, regulatory and criminal enforcement functions are shared by the same agency. Treasury places emphasis on regulatory deterrence. We believe that together with the armed career criminal statutes, this combined regulatory and criminal enforcement approach will have an important long term effect on illegal gun trafficking and gun violence.

The firearms and explosives industries gain efficiencies from the fact that ATF houses all relevant information that is needed for compliance, from tax to licensing to criminal law. For the same reason, state and local law enforcement executives have come to rely on ATF for a full range of information concerning the industries ATF regulates. ATF, because it is a smaller agency, charged with enforcement of politically sensitive laws, also has to work closely with state and local officials. ATF systematically shares its investigative and technical expertise in (1) firearms, (2) explosives, and (3) arson investigations, and its intelligence on (1) armed career criminals, (2) armed narcotics traffickers, and, increasingly, (3) illicit gun traffickers.

Since the Waco review, the increased communication between Treasury and Justice has resulted in further cooperation among federal, state, and local law enforce-

ment bureaus in the field. It is field cooperation, as much as headquarters and Departmental coordination, that will prevent enforcement failures such as at Waco in the future.

An outstanding example of field cooperation is the arrest and indictment of an individual last month in Texas. A Texas State Trooper initially contacted ATF and provided information that this person was attempting to purchase machine guns and C-4 plastic explosives. By using an undercover agent, ATF learned that he was part of a violent group dedicated to restoring the United States to its "common law roots," and that this group was planning a "major offensive" in July 1995. This offensive was to include the destruction of several IRS buildings throughout the United States. The investigation disclosed plans to bomb specific IRS offices. The conspiracy involved an intricate funding scheme, including solicitation of money from the public by "Constitutional America."

During the investigation, ATF requested FBI participation in the case, and coordinated assistance from IRS, FBI, Secret Service, the Texas Department of Public Safety's Intelligence Division, the Smith and Wood County Sheriff's office, and the Tyler Police Department.

The Smith County Sheriff arrested the individual without incident. ATF, FBI, and IRS assisted at the arrest. A federal grand jury indicted the individual in Tyler, Texas on several firearms related charges.

Certainly, serious mistakes were made at Waco. Nevertheless, as we evaluate ATF, we should focus also on what it is doing today, in cases like the Polk case, and not simply on what happened almost three years ago at Waco.

I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Noble.

I notice Mr. Magaw is just coming, so I think we will turn to him before I ask any questions.

Welcome, Mr. Magaw. We are happy to have you here and we look forward to hearing your testimony. Thank you. Please proceed.

STATEMENT OF JOHN W. MAGAW

Mr. MAGAW. Chairman Hatch and distinguished committee members, in my capacity as the Director of the Bureau of Alcohol, Tobacco and Firearms, I am pleased to come before you today and I am proud of the valuable contributions made by ATF as a Treasury bureau and I am very honored to represent the outstanding women and men who comprise our organization.

ATF agents continue to put their lives on the line every day to protect the American public from the most violent and dangerous criminals. Every day, ATF inspectors quietly and efficiently oversee legitimate business compliance with Federal laws involving the industries of alcohol, tobacco, and firearms, along with explosives, and they collect \$13 billion yearly in revenue.

I take all criticism of ATF to heart. Let me assure you that if criticism is fair and accurate, I will move vigorously to make corrections. But if criticism is unfair or unfounded, I will defend our Bureau with equal effort.

Mr. Chairman, I have prepared a long statement and respectfully request to submit it for the record in order to keep these opening comments to a minimum.

The CHAIRMAN. Without objection, we will do exactly that.

Mr. MAGAW. As I look back over my tenure at ATF, two thoughts strike me. First, Mr. Chairman and members of the committee, Waco was a terrible tragedy. Grave mistakes were made that must never occur again. I deeply regret the fact that these mistakes have resulted in a loss of life, coupled with extreme pain and suffering for many human beings.

But please do not view ATF solely within the context of Waco. It would be unfair to an agency with such a long history of quality public service. We must also remember that this was the first time in American history where law enforcement was so attacked. We made serious mistakes. We have learned from them and we are sharing them with all of law enforcement.

Second, all ATF jurisdictions are controversial ones, large groups on both sides of every issue, whether it is alcohol, whether it is tobacco, or whether it is firearms, even explosives and arson if family planning clinics are involved. This body and the public should evaluate with an open mind the negative rhetoric and the false impressions conjured up by those with special interests or special agendas.

I invite members of the committee and their staffs to take the time to look at the record. There you will find the outcome of the fine work that ATF typically does every day. My long statement provides many examples of this exemplary work of which I speak.

When I came to ATF, I found an agency still mourning the losses of four agents that were killed by David Koresh and his followers at Waco. I found an agency still trying to heal its wounds, both literally and figuratively. I saw it as my responsibility to provide the leadership necessary to help ATF pass these times and to see that ATF emerge from the Waco experience vastly improved and more effective in carrying out its dangerous law enforcement missions. I have worked diligently to keep that commitment.

From my experience with ATF throughout my years as a member of the Secret Service, I knew that the image of ATF personnel as sinister agents looking for a fight was utterly at odds with the character and disposition of the ATF personnel that I had interfaced with.

Mistakes are certainly made every day in the field of human endeavors, including law enforcement. We cannot entirely eliminate mistakes but we must manage them, reduce their number, and certainly minimize their effects.

In the aftermath of Waco, we have reexamined completely our way of doing things. We have moved to correct and improve management, training, operational systems, and address weaknesses identified in the Treasury Department's Waco review. Although the Treasury Department's review was very stinging in their criticisms, the review's accurate, unvarnished findings have provided the framework for making ATF a stronger and more effective organization.

The Waco administrative review identified a number of systemic weaknesses that contributed to some of the poor decisions that were made during the investigation and the subsequent raid at Waco. The first lesson we learned is that ATF cannot carry out alone every conceivable tactical operation that we might encounter. Prior to Waco, we did not contemplate that some operations might be larger or more complex than ATF is equipped to handle.

Waco has taught us that we must be prepared to seek help and assistance from other agencies, from experts, from other government and local law enforcement agencies as well as private individuals and organizations. To this end, Secretary Rubin, Attorney General Reno, our Under Secretary Noble, have instituted regular

meetings, of which I am a participant. These meetings develop joint coordination strategies for shooting incident investigations, undercover operations, policies on the use of force, large operational undertakings, and many other matters that involve the entire spectrum of law enforcement.

The second lesson that became obvious is that better coordination, communication, and oversight is necessary between ATF and the Treasury Department. ATF must timely inform the Under Secretary for Enforcement of our intentions and to seek his oversight in significant matters.

ATF was late in informing Treasury of its intentions to execute the search warrant at the Branch Davidian compound. Since Waco, the Treasury Office of Enforcement has instituted a policy mandating all Treasury bureaus to notify the Under Secretary of sensitive and significant matters and major investigations at an early stage.

Within the context of our own capabilities, the Waco experience has taught us other valuable lessons on the planning, the execution, and the post-raid aspects of an operation. Some of them, sir, are as follows:

Commanders must be chosen based on their ability to handle the type of operation involved and not based on their territorial responsibilities. Commanders must have clearly defined duties and responsibilities.

Planners and commanders must have accurate, timely, and coordinated intelligence. Planners and commanders must have training in a wide range of tactical options.

The incident commander must be located at the command post, where he or she can have access to all intelligence and operational developments.

Plans must contain carefully planned contingency strategies so that the momentum for going forward does not take control over rational decisionmaking. There is also a clear need for greater attention to operational security throughout the entire organization.

A media response team, comprised of senior agents with extensive experience, as public information officers must handle press queries at the site of crises in the future. Managers, team leaders, and public information officers must receive crisis management training. This course has been developed and has been delivered to members of our organization.

A core of group agents from each of our field divisions will be trained in negotiating crucial situations. Without elaborating more, this is a book showing corrective actions, the issues and the corrective actions that we have taken and your committee and members of your staff will have as many copies of this as they would like, sir.

The CHAIRMAN. Thank you.

Mr. MAGAW. As a result, this book has been developed as a result of not only the Treasury oversight which was overseen closely by Undersecretary Noble, but also by my personal observations and examinations since arriving here a little over 2 years ago. It also identifies the specific steps we have taken to correct some of the items that we have discussed. Let me summarize two or three of those.

We have provided crisis management training to headquarters staff, all special agents in charge and all supervisors and team leaders. We are in the process of finalizing an ATF order to ensure that major operations are supervised by a manager who has the proper background and training with the Director's office providing close oversight. We have initiated the position of a headquarters program manager for our Intelligence Division to serve as an intelligence coordinator. And as we all know that was one of the huge breakdowns in Waco. A full-time intelligence officer's position was established and implemented in all of our field divisions throughout the country so that they are constantly thinking and talking and paying attention to operational and security intelligence.

We established a plan to form an intelligence response team. If it is a fairly large unit and the intelligence officer cannot handle it, a response team will go out so that they are totally committed to intelligence, so that it is accurate, it is timely, it is complete.

We also are participating in intelligence information sharing meetings among Treasury and other Federal and local law enforcement units. ATF's regulatory enforcement function, however, was not involved in our intelligence gathering matters in the past. They are now. They have a lot of proprietary information and we have added a regulatory enforcement personnel to our Intelligence Division to provide information such as serious violations being committed by Federal firearms and explosives licensees. This will permit us to use our resources better, especially in firearms trafficking and illegal sale and movement of explosives.

We have implemented an audit program to ensure that our intelligence improvement continue to be effective and we will measure them and make adjustments as necessary.

The 24 regional special response teams are being transitioned to 5 regional teams. They no longer will be 25, they will be 5. The SRT's will now have crisis negotiators and emergency medical technicians aboard. Because of this consolidation approximately 150 personnel are being returned to full-time investigative duties.

We are taking steps to improve operational security. One of those we were highly criticized in the Waco incident. We are improving our technical capabilities, that is, secure radio and telephone communications.

We have implemented a new ATF order specifying undercover guidelines and instituted an undercover review committee with representation from ATF, other Treasury agents, and Justice personnel that must review all sensitive undercover operations and report to Undersecretary Noble.

We have improved our ability to respond accurately and effectively to the media and to Congress by improving our training of public information officers and our notification protocols at times that notifications need to be made.

It is also clear that it is crucial for law enforcement to develop an understanding of particular groups or particular organizations prior to interfacing with them. A plan is being developed to see that briefings and consultations take place when needed.

In order for the changes made in ATF to truly make a difference it was determined that we also needed to completely revamp the way we do business on a broader scale. We needed to improve our

organizational structure, both at headquarters and in the field, and to establish a guiding vision, a strategic plan, if you will, that would give all of our actions content and constructive approach.

The restructuring of headquarters staff is completed and the successful future of ATF obviously is dependent upon a well-trained and a professional force. And to this end, a training and professional development directorate has been established. In the face, also, of constant demands to do more with less, a science and information technology directorate has been created. This office will ensure that ATF keeps pace with science and technology developments that can improve our effectiveness, and in doing so, coordinating that development with the Treasury Enforcement Council and the Department of Justice.

The internal review process has been strengthened to provide a strong, well-staffed inspection unit which answers directly to me and conducts both operational reviews and internal investigations, while at the same time, closely coordinating with the Treasury Inspector General's Office.

The above changes were made without increasing our headquarters personnel and these changes have been in effect for about 1 year. A 5-year plan to restructure our field divisions and districts is ready for presentation under Secretary Noble. The plan improves the span of control and reduces the number of senior level management positions. It also places our field personnel where the work will be in the year 2000 to 2005.

ATF did not have a strategic plan that defined its future, its goals. For outstanding work to be done, such as ATF does and for it to be recognized and supported, it needs to be part of a defined mission, understandable to ATF personnel, approved by the administration, Congress, and the public. We have already begun to radically alter the way we do business. These plans will define our future as an agency, committed to ensuring a sound and safer America through innovation and partnerships.

Attached to my written statement is an outline of ATF's strategy for the future, the strategic plan. We will continue to improve through innovation and through our continued partnerships with our colleagues in State, local, and Federal enforcement.

While this hearing is a very important process for publicly examining ATF's actions at Waco 2½ years ago, it is critical in my opinion that we not overlook the substantial changes made at ATF since that raid. We recognize that Waco has contributed to the current level of public mistrust. We are hopeful that these hearings will clear the air of any misinformation surrounding Waco and allow us to move forward to focus on our central mission: removing dangerous criminals from our streets and neighborhoods.

In closing, there are two additional points which I believe are particularly critical not only to ATF but the entire law enforcement community and more specifically the public that we serve. Moreover they are imperative to the preservation of our Constitution and our cherished way of life in America. I am speaking of the time-honored systems of checks and balances throughout Government. They must be safeguarded to protect against abuse. They must be backed up by vigorous congressional oversight, like you are hearing today, sir.

And last, it is essential that the public trust its law enforcers. Trust is a matter of personal integrity, it is a matter of personal competency. Trust is a matter of agency integrity and a matter of agency competency. I pledge to you, sir, to evaluate and maintain the highest, elevate and maintain the highest of these standards within ATF.

Thank you, Mr. Chairman, for approving the time necessary for me to make this statement.

[The prepared statement of Mr. Magaw follows:]

PREPARED STATEMENT OF JOHN W. MAGAW

Chairman Hatch, and distinguished Committee Members, in my capacity as the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), I am proud to be here today. I am proud of the valuable contributions made by ATF as an agency, and I am honored to represent the outstanding men and women who comprise our Bureau. ATF agents continue to put their lives on the line every day to protect the American public from the most violent and dangerous criminals. Every day ATF inspectors quietly and efficiently oversee business compliance with Federal laws and collect \$13 billion yearly in revenue. I have said this before: I take all criticism of ATF to heart. Let me assure you, if all criticism is fair, I will move vigorously to correct a problem. But if criticism is unfair or unfounded, I will defend our Bureau with equal vigor.

And defend I have. It seems as though I have spent the past ten months speaking in various forums either defending ATF or telling people about the good we do. Looking back, two thoughts strike me.

First—Mr. Chairman and members of the Committee, for anyone to view ATF solely within the context of Waco or any other isolated incident is not only unfair but a serious mistake as well.

Second—I believe that sometimes words are not enough and that people should be judged on what they do, not on what they say they do. Nor should we rely on the false impressions conjured up by authors and screenwriters who create paper and celluloid superheroes.

So I invite members of the Committee and anyone to take the time to look at the record. There you will find the outcome of the fine work that ATF typically does every day.

The excellent work that ATF performs can readily be seen in the numerous special programs it administers as a result of its unique jurisdiction and specialized expertise. These programs include:

ATF's Achilles programs which concentrates on the enforcement of Federal firearms laws that provide mandatory prison sentences for armed drug traffickers and career criminals.

ATF's Violent Offender Program wherein ATF uses criteria similar to that established under the Armed Career Criminal Act to pre-identify career criminals most likely to be a danger to society.

ATF's Public Housing Enforcement Program wherein ATF has joined with other Federal, State, and local agencies to provide residents with the tools to rid their neighborhoods of drugs and crime.

ATF's CEASEFIRE initiative is a pioneering effort in the advancement of a unique and innovative ballistic identification system. This computer identification system capable of assisting the firearms examiner in linking firearms to expended ammunition and multiple shooting incidents.

ATF's International Traffic in Arms (ITAR) program has been developed in an effort to assist foreign countries experiencing increasing levels of violent crime resulting from the illegal movement of firearms from the United States.

ATF's tax collection function results in nearly \$13 billion in Federal excise taxes being collected from the alcohol, tobacco, and firearms industries.

ATF has regulated for well over 60 years the trade practices of the alcohol beverage industry not only ensuring the propriety of various competitive practices within the industry but also protecting the consumer through ensuring the proper labeling and advertising of such products.

These program efforts on the part of ATF have resulted in numerous accomplishments. A typical examination of our law enforcement activity will reveal examples of our everyday work:

The September conviction of a bomber caught by ATF for mailing a bomb to a Senate staffer this summer here in Washington, DC.

The September indictment of a tax protester who is alleged by ATF to have plotted to bomb an IRS service Center, in Texas, the workplace for more than 3,000 employees.

The August conviction of a firearms trafficker arrested by ATF for supplying guns from Alabama to criminals here in Washington, DC, one of which was used to murder a District Police Officer and two FBI agents inside Police Headquarters.

The August conviction of a Virginia gun dealer who conspired with a convicted felon to obliterate serial numbers from firearms and sell more than 600 of them to prohibited persons.

The August alcohol excise tax assessment of \$2.5 million dollars levied by ATF against a distiller who was involved in a major tax fraud involving the unlawful diversion of distilled spirits.

The July conviction of a bomber charged by ATF with killing the father of a State witness in Washington. He was sentenced to two life sentences without parole plus 40 years.

The June conviction of a gang member in Chicago for the beating death of a woman found by ATF agents dying in the hallway of a housing complex. ATF agents who were working in the area observed three subjects leaving the area with blood stained clothing and detained them.

The June conviction of an armed repeat offender in San Francisco who was sentenced to a mandatory 26 year prison sentence, the result of an ATF investigation involving the unlawful possession of a "sawed-off shotgun."

The June arrest of 43 members of an organized criminal group in Tennessee as a result of an ATF-lead task force investigation conducted by 200 officers which involved firearms trafficking, arson, larceny, money laundering and fraud.

The June conviction of a bomber charged by ATF for his involvement in a series of bombings in New York which left five people dead and two injured. He was sentenced to four consecutive life terms plus 30 years.

The list goes on and on, month after month, year after year ATF works to make America a safer place for all of us by fighting violent crime.

ATF is at the forefront of the battle against violent crime because of our unique position of being vested with the enforcement of the federal firearms and explosives laws and the regulation of those industries. At our disposal are valuable assets that assist us in carrying our investigations against those who violate the statutes. Our National Tracing Center, providing 24-hour assistance to Federal, State, local and foreign enforcement agencies in tracing guns used in crimes, is the only facility of its kind in the world. We also have firearms and explosives technology specialists who are nationally recognized experts. In addition to support for its criminal enforcement mission, ATF inspectors maintain regulatory oversight of the legal explosives industry, including 13,000 explosives licensees and permittees. ATF's jurisdiction and specialized expertise are unique and as applied through enforcement, regulation, and cooperative partnerships provide invaluable services to the public. This is particularly true in our efforts on firearms and explosives-related violence.

The statutes ATF enforces involve a blend of tax, regulatory, and criminal enforcement functions that the Treasury Department is uniquely suited to handle. Treasury law enforcement functions have always involved criminal laws interwoven with revenue laws and regulatory controls, whether in the enforcement of tax law, trade law, currency protection, or firearms regulations. In the case of the firearms and explosives industries, the criminal investigative responsibilities cannot effectively be separated from the tax and regulatory responsibilities because they are so technically and practically interwoven.

The area of our work that is the most controversial is firearms. Because ATF is the agency responsible for enforcing our nation's gun laws, some have tried to portray ATF as a threat to the private ownership of firearms. Let me be absolutely clear: ATF is no threat to the private ownership of lawful firearms. Law-abiding citizens have no reason to question our mission. In the area of firearms our mission is simple—to combat gun violence and regulate the legitimate firearms industry. Our targets are criminals who use firearms to hurt others. The enemy of law-abiding gun owners is not ATF; it is violent criminals. Every time someone fires indiscriminately into a school yard, or a crowded court room, or sprays gunfire at the White House, or targets law enforcement officers, we are reminded once again of the dangerous times in which we live.

The more successful we are in keeping guns away from criminals, keeping illegal gun traffickers from reaching children, and prosecuting those who use guns in crime, the safer all Americans are. That is ATF's mission—enforcing the law on behalf of the American people.

Unfortunately, there are many who want to undermine ATF because they see us as a threat to firearms ownership. I strongly believe that only the criminal will ben-

efit from a weakened ATF. State and local law enforcement agencies will lose, the victims of gun violence will lose, and law-abiding gun owners will lose. We recognize that Waco has contributed to the current level of mistrust. We are hopeful that these hearings will clear the air of the misinformation surrounding Waco, and allow us to move forward to focus on our central mission: fighting dangerous criminals.

When I came to ATF, I found an agency still mourning the loss of four of its agents who were killed by David Koresh and his followers at Waco, and still trying to heal its wounds, both literally and figuratively. I saw it as my responsibility to lead ATF past these times, and to see that ATF emerged from the Waco experience improved and more effective in carrying out its dangerous law enforcement mission. From my experience with ATF throughout my years working at Secret Service, I know that the image of ATF personnel as sinister agents looking for a fight is utterly at odds with the training, character, and disposition of ATF agents.

Mistakes are made every day in every field of human endeavor, including law enforcement. We cannot eliminate mistakes, but we must manage them, reduce their number and minimize their effects. In the aftermath of Waco, we reexamined completely our way of doing things. We have moved to correct and improve management, training, and operational systems, and address weaknesses identified in the Treasury Department's Waco Review. Although its criticisms were stinging, the Review's accurate, unvarnished findings have provided the framework for making ATF a stronger and more effective organization.

The Waco Administrative Review identified a number of systemic weaknesses that contributed to some bad decisions at Waco.

The first lesson we have learned is that ATF cannot necessarily carry out alone every conceivable tactical operation we might encounter. Until recently, the assumption in our National Response Plan was that certain operations were larger or more complex than one division could handle, and that assistance from other divisions would be necessary. However, prior to Waco we did not contemplate that some operations might be larger or more complex than ATF is equipped to handle. Waco has taught us that we must be prepared to seek help and assistance from other agencies, and from experts from other government law enforcement agencies as well as private organizations when necessary. To this end, Secretary Rubin and Attorney General Reno have instituted regular meetings to develop joint coordination strategies for shooting incident investigations, undercover operations, policies on the use of force, and other matters.

The second lesson we have learned is that better coordination and communication is necessary between ATF and the Treasury Department. ATF must timely inform the Under Secretary for Enforcement of our intentions in significant matters. ATF was late in informing Treasury of its intentions to execute the search warrant at the Branch Davidian compound in the days preceding the warrant. Since Waco, the Officer of Enforcement has instituted a policy mandating all Treasury bureaus to notify the Under Secretary of sensitive and significant matters and major investigations.

Within the context of our own capabilities, the Waco experience has taught us other valuable lessons on the planning, execution, and post raid aspects of an operation.

PLANNING

Planners must have accurate and timely intelligence.

Planners must have training in a wide range of tactical options.

Plans must contain carefully constructed contingency strategies so that the momentum for going forward does not take control over rational decision making.

Commanders must be chosen based on their ability to handle the type of operation involved, and not simply on the basis of territorial jurisdiction.

EXECUTION

Commanders must receive accurate and timely intelligence.

Commanders must have clearly defined duties and responsibilities.

The Incident Commander must be located at the command post where he/she can have access to all relevant intelligence and operational developments.

There is a need for greater attention to operational security.

POST RAID

In crisis situations, agents who are emotionally involved and exhausted should not be left to handle media relations:

At all times, ATF employees must tell the truth, and must admit mistakes. If misstatements are made, they must be corrected as quickly as possible.

The detailed corrective actions I have ordered are described in the report attached to my written statement. These changes are real. People are in place, training has been developed and implemented, and specialized support units are ready. My report addresses deficiencies identified in the Waco Review, and identifies the specific steps we have taken to correct them. These actions will also ensure that we operate in accordance with the more general principles described above. I will take a moment to summarize some of our major actions.

We have provided crisis management training to Headquarters staff, all special agents in charge, and all Special Response Team (SRT) supervisors and team leaders. We are in the process of finalizing an ATF Order to ensure that major operations are supervised by a manager with the proper background and training; the Director's office provides oversight.

We have initiated the position of Headquarters Program Manager in the intelligence division to serve as intelligence coordinator for major investigations.

Full-time intelligence officer positions were created and implemented in all 24 field divisions to gather, analyze, and disseminate intelligence information. They will analyze surveillance or undercover logs, ensure the proper use of electronic surveillance equipment, and oversee operational security.

The Intelligence Program Manager and the intelligence officers can jointly serve on an Intelligence Response Unit (IRU) for major incidents as needed. The IRU gives intelligence directly to the commander in charge and acts as liaison with other law enforcement intelligence units.

ATF's Intelligence Division has initiated ongoing intelligence information-sharing meetings among Treasury law enforcement agencies that have proven to be useful.

ATF's regulatory enforcement function supports our law enforcement function with a wide variety of intelligence information proprietary to ATF. We have added regulatory enforcement personnel to the intelligence division to provide information, such as violations being committed by Federal firearms and explosives licensees, that permits better use of our resources.

We have realigned our foreign field offices under the intelligence division to provide greater intelligence support for ATF criminal investigations.

We have implemented an audit program to continually ensure proper utilization of the existing field division intelligence research specialists.

An intelligence officer position is being incorporated into the SRT's to provide time-sensitive tactical information that can be crucial to a successful tactical operation.

The 24 divisional SRT's are being transitioned to 5 regional teams which will receive advanced tactical operations training. The SRT's will be augmented with crisis negotiators and emergency medical technicians.

We have taken steps to improve operational security through training and improved technical capabilities, i.e. secure telephone communications.

We have implemented a new ATF Order specifying undercover guidelines, and instituted an undercover review committee board with representation from ATF, other Treasury agencies, and Justice personnel that must review all sensitive undercover operations.

We have improved our ability to respond accurately and effectively to the media and Congress by improving the training of public information officers, and notification protocols have been implemented for dealing with crisis situations.

As you can see, many of our lessons learned relate to tactical intelligence collection, analysis and dissemination. Tactical intelligence pertains to particular facts, such as the type of vehicle a suspect drives, that can provide direct operational support to the field. Strategic intelligence is information collected over time concerning long-range patterns of activity or trends that are developing. It is crucial for law enforcement to develop an understanding of a group's interaction or exclusion from society before attempting to counteract their criminal activities. ATF also makes use of public source documents and information in our strategic intelligence operations.

Strategic intelligence gathering and dissemination is an important component of law enforcement. In itself it can be a daunting task. Recently, we have heard discussions on the possibility of creating intelligence centers and shared databases. When we consider this concept, however, it is paramount to keep in mind the overriding constitutional concerns for civil liberties, privacy, freedom of speech and assembly, and freedom of association and religion. The accurate and proper collection and consolidation of intelligence material is a difficult challenge. Delicate constitutional issues may come into play. Detractors may say it is a slippery slope on the descent to a "Big Brother" form of government.

Strict guiding principles would have to be invoked to ensure that it is done correctly and with civil liberties intact. A strict oversight function, including the Congress, would have to be firmly established to closely monitor the system. Standards

for inclusion of information must be rigorous and comport with civil liberties strictures. Information must be timely, wholly accurate, and subject to verification.

Once constitutional concerns are alleviated, practical considerations must also figure into the discussion of intelligence centers or shared databases. Such centers would function to the best advantage if a working group of system users could be designated as technical advisors and could evaluate the system to determine appropriate policies and guidelines.

For intelligence information to be used to its greatest crimefighting potential, all users of the information must have equal access to, and control over, the intelligence. That means parallel cooperation at both ends of the equation for all participating law enforcement agencies. Each user must have the ability to input its own intelligence and each user must be guaranteed instant and complete access to all of the intelligence in the system in compliance with all Federal laws and applications. As an additional measure, each user should be required to submit to the system all of the intelligence information specific to that agency. This enhances the integrity and soundness of the system.

To further guarantee that each user has equal access, each law enforcement agency must also be furnished with the equipment and resources necessary for full participation.

In order for the changes made at ATF to truly make a difference, I determined that we also needed to completely revamp the way we do business on a broader scale. I determined that we needed to improve our organizational structure, and to establish a guiding vision that would give all other actions context.

I have completed the restructuring of the Headquarters staff. The successful future of ATF is dependent upon a well-trained, professional work force, and to this end I have elevated the training function to an executive level position, and created a Training and Professional Development directorate. In the face of constant demands to do more with less, I created a Science and Information Technology directorate to ensure that ATF would keep pace with science and technology developments that can improve our effectiveness. On science and technology issues we will be coordinating with other Treasury agencies through the Treasury Enforcement Council. I have also strengthened the internal review processes to provide for a strong, well-staffed inspection unit to conduct both operational reviews and internal investigations.

Additionally, I have established the Office of the Ombudsman to provide all levels of the Bureau direct access to the Office of the Director. Eight peer groups, representing the broad spectrum of our diverse work force, have been implemented to focus on equal employment opportunity concerns.

The final and most important change that was needed was to define the future of ATF. Outstanding work done by ATF has been lost in the haze of Waco and other real and perceived mistakes. For the outstanding work to be recognized, it needs to be part of a defined mission, understandable to both ATF personnel and the public. We've already begun to radically alter the way we do business. These plans will define our future as an agency committed to ensuring a sound and safer America. Attached to my written statement is an outline of ATF's strategy for the future. We'll improve through innovation and through our continued partnerships with colleagues in State, local, and Federal law enforcement. Examples of our innovative methods include our canine detection initiative, our Tracing Center, and our CEASEFIRE ballistic identification network. ATF worked in partnership with law enforcement colleagues to investigate the Oklahoma City bombing and we are continuing to hold groundbreaking symposiums with the firearms and explosives industries. From guiding principles to basic operational strategies, this strategic planning process will redefine ATF from top to bottom. Our new strategic plans will affect every aspect of our work from the types of employees we hire, to how they are trained, to what they work on, and how we relate to the public. Our basic enforcement strategy is focused on fighting violent crime. Laws and regulations will not be enforced or resources expended in a vacuum, but as pieces of carefully defined tactics that demonstrably contribute to our overall strategy to fight violent crime. The strong partnerships and the spirit of cooperation we have long enjoyed with the regulated industries, and the State, Federal, and local law enforcement community are being extended to firearms industries and firearms owners.

While this hearing is an important process for publicly examining ATF's actions at Waco two and a half years ago, it is critical that we not overlook the substantial changes made at ATF since that raid.

In closing, there are two additional points which I believe are particularly critical, not only to ATF but to the entire law enforcement community and beyond. While these elements are important to good law enforcement, moreover they are imperative to the preservation of our Constitution and our cherished way of life in Amer-

ica. I am speaking of the time-honored system of checks and balances among the branches of government. They must be safeguarded and used without hesitation to protect against possible investigative or prosecutorial abuse. They must be backed up by vigorous congressional oversight. As long as these checks remain strong, everyone benefits. And lastly, it is essential that the public trust its law enforcers. Trust is a matter of personal integrity and competency. Trust is a matter of agency integrity and competency. I pledge to maintain the highest of these standards within ATF. I am ready to answer any questions you have.

The CHAIRMAN. I want to thank both of you and we appreciate the suggestions that you are making and the things that you are doing to change what goes on there.

We note, Mr. Noble, in your statement all of the positive changes, as well Mr. Magaw, in yours that are currently in the process which are occurring and have occurred at ATF.

Now, do both of you feel that these changes are going to work and that they will prevent this type of a tragedy from ever happening again?

Mr. Noble, we will take you first, and then Mr. Magaw.

Mr. NOBLE. Yes, Mr. Chairman.

I am not confident in saying that we can prevent tragedies. I know that the chairman did not intend that.

The CHAIRMAN. No.

Mr. NOBLE. But I am confident that we will reduce the likelihood of such tragedies in the future and by cooperation and coordination between both the Treasury and the Justice Departments, not only the law enforcement entities but the Criminal Division oversight components, I think we will be able to take a very, very big step forward in ensuring that our Congress and the public have confidence that we are investigating people who need to be investigated, that we are investigating them properly and that we are not abusing the process of law or the rule of law along the way.

The CHAIRMAN. And you feel confident that these changes you are making are going to enable you to do that without, hopefully without having any further incidents like this?

Mr. NOBLE. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Magaw, do you have anything to say about that?

Mr. MAGAW. I believe, Senator, that with the Treasury/Waco review, the lessons learned in there, the kinds of things that we are in the process—not in the process, we have started them all—that we are working on, an incident like this, and those kinds of mistakes will not occur again.

The CHAIRMAN. Back to you, Mr. Noble. Mr. Fyfe, in testifying, said that—in his opening statement said that some of the problems and what happened at Waco did not arise because of a lack of rules, but really because the rules that were on the books were ignored.

While acknowledging that you have made some very needed changes here, I would like you to explain what Treasury has done or is doing to enforce existing policies that might also help prevent these type of mistakes from ever being made again.

Mr. NOBLE. Well, one of the first things I did was to articulate a policy in writing, to share that policy with the Bureau heads of the Treasury Department and to share that policy with the Bureau heads and the policy overseers of at the Justice Department, to in-

stitute regular meetings between the Treasury Enforcement Bureaus and the Undersecretary for Enforcement and to make sure that we have the best possible leaders in place at the various bureaus. And with Director Magaw at ATF and the other directors we have at Treasury we believe we have that.

And, finally, to make sure that we engage in a proper dialog with our oversight committees in Congress. I know that we do not have an opportunity to appear before you often but I have found in the past, when we have, that has further benefited us in terms of our law enforcement mission.

The CHAIRMAN. OK. Mr. Magaw, I understand that one major change has to do with coordinating intelligence. In fact, I think it is fair to say that this was the focus of change in ATF. We heard testimony, earlier today, from Captain Kolman that the national response plan included an intelligence coordinator and that, in fact, someone was designated to fill that role; is that right?

Mr. MAGAW. That is correct. And the change that we have made, since that period of time, sir, is that we have put intelligence personnel out in our field divisions so that we are in the business of collecting operational intelligence all the time that can be helpful.

This is a chart that they are going to put up now, Senator, that talks about the different things that we have done in the intelligence area.

The CHAIRMAN. OK.

Mr. MAGAW. The creation of that program manager, so that they are constantly—the Intelligence Division was only created about 11 months before Waco started. ATF did not have an Intelligence Division before that time. So it was in its infant stages. Since that time it has grown up rapidly to the 24 in the field divisions, and they are constantly feeding information back and forth to headquarters where it is within our jurisdictional area and of interest to us. If it is some other bureau or agency, then we pass it along to them.

The creation of special response teams. If it is a large operation, one person cannot handle it. Our operation in headquarters is an around-the-clock kind of operation available. We have systems now that we did not have before that allows us to do link analysis and where there is a lot of facts and information coming in at one time, this system will sort it out. It will help us make better decisions.

We have enhanced our intelligence training by working with the intelligence communities all throughout the Federal and the locals to take advantage of training to upgrade our abilities there. We have improved the guidance to our special agents by giving them all kinds of questionnaires and sample checklists so that if they do have to find out some information they have a checklist to go by because they are not normally trained as intelligence agents, if that might be the case. And improved timeliness, all of those kinds of things. And the oversight is a constant oversight.

And so this, like you say, was one of the huge criticisms. And so the Intelligence Division came from just a headquarters, 8-hour-a-day kind of an operation to, now, a nationwide one, sir.

The CHAIRMAN. Well, as you know we have people even on our committee who would like to do away with ATF. Some would like to move it out of Treasury into Justice. Others would like to break it down. I mean there are a lot of different ideas.

I have an open mind on this. I, frankly, appreciate the changes that have been made. And I think that you know I appreciate the candor that you have had, that everybody has had here today. There were mistakes made, things should not have happened the way they did. But you can understand why people in our society are skeptical about our law enforcement because of a whole wide variety of things, Waco, and Ruby Ridge just being two of them.

And when we see an officer Fuhrman, who evidences racial prejudice, that says to people there must be a lot of other officers like that, at least in the local police, and then they start saying, well, maybe also in the Federal law enforcement areas as well.

And you tend to, because you have had this series of mistakes, you tend to get blamed for everything. So I am happy to see some of the changes that you are making. I think that should calm the fears of a lot of people in our society today.

I would be the last to say that we should not have the SRT or the HRT out there watching over us when you really have true hostage taking and true dramatic, very, very violent situations. And I think it is important that people in this country understand that those people risk their lives for us and that they are not a bunch of cowboys just running around doing nothing.

But if they do not have the right planning, the right intelligence, the right guidance, the right guidelines then, no matter how good they are, they can also be part of a fiasco. And in this case, we have two of them on our hands that have caused the diminishment of belief in law enforcement in this country that really alarms me.

So I think this hearing has been very important with regard to all the testimony that has been brought, but especially yours.

Well, we will turn to Senator DeWine and see if he has any questions.

Senator DEWINE. Thank you, Mr. Chairman. I will be very brief. Good afternoon, gentlemen, I apologize for coming in late, and going back and forth between a judiciary committee and an intelligence committee at the same time.

We heard testimony earlier this morning from Dr. Ammerman in regard to the issue of psychological profile, of knowing who we are dealing with. And I asked the doctor some specific questions about the quality of information that the FBI had that you had in regard to Waco.

And if I could summarize the doctor's statement it was that during the actual siege there was good information, there was a good psychological profile, there were good summaries that were written. But the doctor felt that the information simply was not used by the policy makers.

My question to you really takes off from that but has to do with a much bigger picture. In regard to the future, what kind of a role do you see that information playing in any decision that you make in the future, particularly when you are dealing with so-called religious cult groups?

I may not have been totally clear. Let me, if I could, just summarize. You know, what information is needed. How do you gather that information? How do you rely on for that information? It is that internal/external combination of the two. And then who is the

consumer of that information and what do you do with it? That is kind of a process question.

Mr. MAGAW. I am used to this process because of my many years in the Secret Service and doing the kind of protective work that they do. And when I came to this organization I wanted to make sure that we implemented it into our program.

I think it is tremendously important that you not only consult the experts but you hear what they have to say and you listen and that you apply some of the things that they have to say.

And so that what we have done is set up a list. What I want to be very careful of is that we are not in a position where we are gathering information on groups unless we have a reason to do it. So what we have is a list of people who are experts in certain areas, in the different areas that we might be dealing with, whether it is the motorcycle gangs, or whether it is certain militias or whether it is other groups. And when needed, when we are into a case, in the early stages we are going to be consulting with them. And it is going to be a very vital part as that case moves along.

Where you also heard them talk about this morning is it is very difficult sometimes to referee or to make a judgment on the strong operational people who are equipped to do the operational mode and this other advisory group or those who might be negotiators. And that is why we have an overall manager now of every major case so that that person cannot only bring the information to me and the other assistant directors to help make that decision but we will have close oversight there. And we continue to attend all kinds of conferences.

We had a very good conference in the International Association Chiefs of Police 2 weeks ago that was attended by, I think, over 300 or 400 law enforcement officers. It was sponsored by the Michigan State Police and ATF on militias and Ohio made a great presentation. Your Bureau from the Bureau of Criminal Identification in Ohio made an outstanding presentation.

So we are doing all of these kinds of things, but making sure that we do not infringe upon people's rights and that we do not bring religious or other groups into these things unless there is some reason to do so. And in ATF's case it will be guns or explosives and things like that.

Senator DEWINE. I appreciate that very much. My question, I guess, was more focused on the issue of once you have a target group in the sense that there is a confrontation or such as there was at Waco or there are hostages that are taken. In other words, there is a specific group that you know, that you have to deal with. How do you go about doing the psychological profiles and what you do with that information?

As you reviewed Waco, would you—and you may have already covered this while I was not here and I apologize if you did—but could you review, for me, what your assessment is of your Department's use of that type of information, during the sequence of events? Did you have the information? Did you know who these people were? Did you do the profile on them? What did you do with the information?

Mr. MAGAW. When you look back on it now, taking a 1 to 10, we did about a 3 or 4, instead of being up around 9 or 10. We did talk

to some former Branch Davidians. We did confirm some of the information that they told us. We did not delve far enough into it. We did not have somebody day-to-day permanently thinking about intelligence, dealing with intelligence, coordinating it with everything else that we were doing, so it did not get fed in at the proper time during the investigation or the planning stages in order to make it valuable for us.

Senator DEWINE. One of the points that Dr. Ammerman made this morning was that sometimes there is a reluctance to reach outside of the internal organization, whether it is the FBI or ATF or the Cedarville Police Department, whoever it might be, particularly when you are dealing with an area where there might not be the expertise within the organization.

And I think the doctor was referring to the situation where you have a religious cult and you may not necessarily have a lot of experience in dealing with a group such as that, but there may be an expert somewhere who could add something to that. Is that a problem?

Mr. MAGAW. That is not a problem for us now. Before Waco there had never been an attack on law enforcement officers like that. I do not think we had the awareness to realize that we needed more outside help and consultation and advice. And sometimes it is there, but you do not hear it. And I think it has taught us that right now, if we had a situation come up with a particular group it is my confidence that Stu Allen, our Chief of Intelligence Division, yet within the hour, would be able to have an expert in that particular area to sit down and start talking with and maybe even get them to the scene.

Senator DEWINE. Good. Director, thank you very much, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator DeWine.

Senator Biden.

Senator BIDEN. I yield to Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Senator, and thank you, Mr. Chairman.

Mr. Magaw, I know ATF is often under fire from a lot of different individuals and interest groups but I do want to say this. I think from local law enforcement, particularly in most of California, you do enjoy a very good working relationship. And I, for one, appreciate that and I have heard many compliments and I want to so indicate to you.

I want to ask a couple of questions of you. We heard earlier today from Roger Guthrie regarding the forward observer program. Has this program been changed since Waco and, if so, in what way? And I mean particularly in a way that allows forward observers to contribute more toward intelligence efforts.

Mr. MAGAW. Yes, it has been improved, not only the entire program has been improved. As you talk about Waco and you look at the mistakes that were made at Waco it is because the information from all areas, at least current information, was not going to the planners. We did not involve the forward observers as completely as we should have. We did not have them doing the surveys and the kinds of things that should have been done, which would have

given us a huge amount of information that may have totally altered the way we went about our operation.

Senator FEINSTEIN. Did you happen to hear Mr. Moulton—was it Moulton this morning? Yes, Mr. Moulton. Have you read his comments on the initial flaws of intelligence gathering?

Mr. MAGAW. I have not only read his opinion from the book but we have talked to him a couple of times and then I was briefed on what he said this morning, yes, Madam.

Senator FEINSTEIN. Because I think he pointed out, you know, where everybody thought the guns were under lock and key, they were not. That women were unarmed, they were not. That men would be out in the fields, they were not. That Koresh could have been, in some way, convinced to leave the premises or at least encountered off the premises because he did leave the premises. I mean these are the sorts of things that tell me that basic intelligence was sorely lacking.

Mr. MAGAW. Basic organization was sorely lacking, too. Because the intelligence information was there. If you talked to the 15 or 20 people, the information was there but we had nobody centralizing it. We had nobody specifically responsible every moment of every day for collecting intelligence, evaluating it, analyzing it, and then passing it to those who needed to know. That function just did not exist. As I was explaining earlier, that ATF did not even have an Intelligence Division until about 11 months before this event and so it was very early in its stages.

And so we have made huge progress there and this chart over here so indicates. So that you never again will have a situation where intelligence is not coming in and being fresh and properly analyzed and properly distributed.

Senator FEINSTEIN. Now, let me ask you this question. I know they had heavy weapons, that the 50-caliber, for example, I have been told you can fire it from the Hill and it can hit the White House and that its bullets are 7 inches long.

So I mean, that is serious artillery. And that may have conditioned the reasons why firetrucks were not at the ready when the final tact was taken, but ambulances as well. Henceforth, even if you were in that situation, it seems to me there can be some accommodations made by which emergency personnel and vehicles were protected in that kind of situation.

Mr. MAGAW. Clearly we have to do a better job of that, and in all of our response teams now we are going to have people trained in medical and emergency techniques right on the team itself to include the backup that you are talking about.

Senator FEINSTEIN. Mr. Noble.

Mr. NOBLE. Yes. Senator, you raise a very, very important point and I do not have an answer to it. But the conflict you understand, I am sure; and that is, you really need them ready and able to provide the kind of assistance that might be called for. On the other hand, you know from what you have investigated in the Waco matter that even after the fire started, the people inside the compound were shooting.

So you have a firefighter or a member of an ambulance company or crew and you have to make the determination, do I send her or them in now or do I send them in later? But you definitely have

to have them close enough so that when you decide it is safe enough to send them in they can provide the service that is required.

Senator FEINSTEIN. Your command station was a mile away? Where was the command post?

Mr. NOBLE. Again, I just wanted for the record to make it absolutely clear: one great thing that ATF did in this tragedy was, after 21 of its agents were wounded and four were killed, it turned over complete operation to the FBI. So in terms of where their post was positioned during the siege, I do not have that factual information but I am sure Louie Freeh would provide you with it tomorrow.

Senator FEINSTEIN. Because I think that is one of the vulnerable points now, that there was not a command post that was insulated against that kind of attack behind which you could have had the equipment that was necessary to successfully carry out what is euphuistically termed a dynamic entry.

Mr. MAGAW. In the early stages the command post, which was the building that we had used for our surveillance and observation in the weeks prior to it, was not armored at all and it was about 300 to 400 yards away. Had an installation like you are talking about had some armor—had some protection and you could put the vehicles behind it—the other problem you run into in that area, which we are going to deal with properly the next time, is how do you do that in a remote area without drawing so much attention to it?

They are difficult tasks. But the point you make is a very valid one.

Senator FEINSTEIN. Mr. Noble, when ATF originally informed Treasury about the proposed raid, Treasury refused to allow the raid to go forward. Only after the ATF Director assured Treasury that the raid would go forward only if the conditions were right was the hold on the raid lifted. In retrospect, we know more about those conditions—that David Koresh was tipped off and ready, and no one was working in the pit, and lives were lost.

Given Treasury's concern about the weapons and the children, what kind of discussion took place, what exactly would constitute "right conditions", and was there a method in place to allow Treasury to confirm that conditions were right on the day of the raid?

Mr. NOBLE. You know, there is not a day that goes by—and I have heard people say this before, and I have always wondered whether it was true, and not until Waco happened to me do I know that it can be true—there is not a day that goes by that I do not wonder and question myself about whether there was better advice I could have given on February 26, 1993, that would have prevented the raid from going forward.

All I did on that day—and I want to remind you, not to defend myself but to put it in context, the first time this memo was brought to my attention was a couple of hours after the World Trade Center bombing had occurred. The same Friday when I am thinking about agents who will one day be under my responsibility, secret service agents in the World Trade Center, Customs agents in the World Trade Center—we had not gotten a report back yet whether many were killed, some were killed, none were killed—that was what I was focusing on.

And during that moment a memo came across my desk that raised questions for me, because I had been in Philadelphia when MOVE occurred and I had talked about this raid plan near Waco, TX, that might draw some media attention. And I was thinking that if they seized machine guns or rifles or grenades it probably would not come to anyone's attention at main Treasury. So whoever thought that this would attract the attention of the Secretary, Deputy Secretary because of the results of the raid was probably not watching TV and recognizing that the World Trade Center had just been bombed.

The questions I asked and encouraged the Acting Assistant Secretary to follow through on were questions that led to a temporary hold or stoppage being placed on the raid. Why are we going forward with this raid? What are the objectives that are intended? What are the harms we are trying to avoid? What alternatives do we have? What provisions have been made to assure that people are not going to be unnecessarily put at risk?

I do not remember all the questions, but just sort of common-sense questions that a reasonable person would ask. And we were told that this investigation had been under way for almost a year, that ATF had received intelligence from a variety of sources that this was a very dangerous person who once before—David Koresh—had used arms and armed assailants to overthrow the previous leader of the Davidian compound. That they had talked about going, engaging in a mass suicide if anyone ever learned about this operation. That an undercover agent had been placed inside the compound on previous occasions and would be able to alert ATF if anything had gone awry. There were questions along those lines. And ultimately the Director of ATF, a person who had been the director for 10 years, was personally involved, giving Treasury personal assurances.

And one thing I have learned since then is you cannot manage a field operation from headquarters if you are ATF, and you certainly ought not to manage a field operation if you are in the civilian oversight component. You should just simply ask those questions that are thoughtful, reasonable questions; assure yourself that every question or doubt you have has been addressed; and then let the people who are trained and empowered to do the right thing, do the right thing.

And here, what I just want to highlight—and it is something you alluded to in your earlier remarks—there were three conditions that were supposed to be present which the entire operation's success depended on: the men being in the pit, the arms being locked in the arms room, and the women and children being separated from the arms and from the men in the pit. Those three conditions were supposed to be present.

When they arrived at location, one of the agents later told an interviewer that it was eerily silent. No one was outside. No one thought about asking the questions: Are the three conditions that are supposed to be present, present? Do we see anyone outside? If they had asked that question they would have said, wait a minute, no one is outside. If they had coupled that with what Director Magaw said, were there media vehicles driving back and forth—a media vehicle had emptied and a neighbor was asked questions by

the people inside. In addition, a postal vehicle was seen racing into the compound. Finally, the undercover agent came out and said that Koresh had said, while looking out the window, they know we are coming.

I mean, ATF and the National Guard are coming—the undercover agent said to ATF, they know we're coming. When the agents were rallied at the staging area, 61 agents later reported that the deputy raid commander said that they know we're coming; come on, let's hurry up. Forty-five minutes elapsed between that call to vehicles and when the vehicles arrived at the compound.

Any law enforcement officer who you talk to, manager will tell you, in light of that information a rational law enforcement officer ought to have called the raid off. What Director Magaw has pointed out on previous occasions is that our raid commander and deputy raid commander—especially the deputy raid commander—were so overloaded with so many responsibilities that the questions he asked were: Was there any call to arms, he asked the undercover agent. The answer to that was no. Was there any visible sighting of arms? The answer to that question was no. Was there any visible posting of sentries? The answer to that question was no. He got three negative answers and therefore said, everything must be OK.

What he never contemplated, what people before ATF encountered the Davidians at Waco probably never contemplated, was that people would actually lie in wait in an ambush for agents. If they had thought about the possibility of an ambush, then the negatives would not have given them any comfort and they could have called off the raid.

So I believe that the Treasury Department, the Acting Assistant Secretary for Enforcement, was courageous to have stopped the raid, but he was also courageous to have let it go forward, assuming that the people who were empowered with the decision to make decisions at the location of the raid would make the right decisions.

Senator FEINSTEIN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feinstein.

Senator Biden.

Senator BIDEN. Thank you very much.

Gentleman, it was a fairly extensive and self-critical report that Treasury did. As I understand it, this whole project was monitored by the Office of the Inspector General; is that correct?

Mr. NOBLE. Correct.

Senator BIDEN. What did the Inspector General conclude about how diligent you were at your self-analysis at Treasury?

Mr. NOBLE. The Inspector General submitted a letter, which is part of the Treasury Department Report, saying that the report was comprehensive, candid in its findings.

Senator BIDEN. Mr. Magaw, what has been done—there are a number of improvements that you have put in place—but what has been done, what improvements are being made to the quality of the special response teams that handle operations like this?

I mean, what have you done to ensure the quality?

Mr. MAGAW. What we have done first of all, sir, is reduce the 24 units to 5 and give them five regions of the country. And we have increased their training. We have, we are in the process of increas-

ing their training. We also are making the five units more complete in terms of having negotiators—trained negotiators—on those teams, and also medical personnel on those teams.

What I want to get away from, in this Bureau, is the fact that we used the SRT's. When there were 24—we used them, in my view, sometimes when we did not need to use them in order to keep them active. Now, that is my comment; that is not the agent's personnel. It is mine in a 2-year observation.

What I want to do is to change that culture, if you say that we use those teams and we make forced entries to make arrests as a last resort, not as anywhere in between. I want you to be able to show your supervisors that there is no other alternative. Our number of forced entries and arrests have reduced a lot in the last year and a half. But the arrests have not reduced. There is all kinds of ways to—and you have to go through all kinds of stories and situations before I want those teams used.

The five will be in regions and be able to respond very quickly if there is a need. We have developed a checklist, if you will—which we can have available to the committee—which is put together by not only our Bureau, but other law enforcement input to it. Each supervisor has to go down that checklist, and only if that checklist reaches a certain number are they allowed to even consider activating the SRT team.

Then they call that SRT team supervisor and they talk about the issues and what have you done up until now that makes you believe that we have to be activated? What I want also is our agents—as we had the 24 SRT teams, they were getting all the training for arrests and the agents working the cases were turning them over to the SRT teams to make the arrests.

I want the agents better trained. So these five SRT teams will be pretty much full time but when they are not operational, which will be a great deal of the time, they will be back in the field divisions training the street agents, bringing their level of expertise up in terms of safety, firearms safety, arrests, search and seizure, and those kinds of things.

Senator BIDEN. One last question. What have you done to ensure that the best commanders are in charge of major crisis incidents as they come up and to be sure that they are up to task? You have got these five teams. Are the teams called out based on geography?

Mr. MAGAW. Yes, sir.

Senator BIDEN. How about the commanders?

Mr. MAGAW. The commanders are no longer called out on geography, by geography. They were before. If you were the special agent in charge of that area that became your responsibility. Now, what we are doing is giving all of our special agents crisis management training and more training in those areas.

But we are going to identify three or four or five that will respond to the situation, specifically trained to do that to oversee the entire operation.

Senator BIDEN. What have you been doing—you heard the testimony this morning, this is my last question—you heard the testimony this morning from Professor Ammerman. And one of the most delicate, it seems to me, crises to deal with in this country—because of the first amendment, because of freedom of religion and

our, I think, necessary and overwhelming adherence to being careful we do not interfere with the free practice, the practice of religion—have you in any way increased your inquiry, your background, your training.

The FBI—I have done a lot of work over the years with the FBI on organized crime and the Mafia—they not only deal with the Mafia in terms of how to infiltrate the Mafia, they deal with the Mafia in understanding the codes of silence, what a “made” person is and so on and so forth. I mean they have studied and spent a lot of time and effort dealing with trying to figure out the mentality that permeates that.

Are you doing that with, depending on the potential groups you are likely to have to deal with, neo-Nazi groups, quasi-or-religious groups that may go off the edge? I mean tell me about what you are doing to learn more and to be better equipped to deal with what may or may not be a mounting problem?

Mr. MAGAW. I am very concerned about what you are, Senator, in terms of interfering with people’s rights and religion. So what we have done is we have developed a list of people that are expertise in almost any area that we might be involved in. And as soon as we develop a case, because of explosives or firearms violations or something that is a violation of ATF, then we involve that individual as that case progresses so that as we move forward we clearly understand. But to assess, to assemble that information prior to some kind of violation, we have chosen not to do that.

But our list, our availability to people who are experts in that area—for instance if you take, because of the Waco, you know, we are very up to date. If you take certain militias who have committed crimes of firearms and explosives or arson, we will be pretty up to date on that unit and that group.

But to go out and target any particular group for intelligence and information we are not doing it. But we are keeping a list of the experts.

Senator BIDEN. I have obviously not been articulate enough in my question. I am not talking about who you target. I am talking about, as you sit down there and think of the panoply of problems you may face, the groups that, for example, there is no such cult that I am aware of in the United States, but consider that Japanese cult that used the sarin gas in Tokyo. I mean are you doing preparatory work to learn as much as you can about the way in which these various—not individual organizations, not David Koresh versus some group of snake charmers or something, I am not suggesting any group particularly—but those, the professor said that there are disciplines in sociology that are broken down now to try and determine even within the discipline of sociology relating to the practice of religion and fringe religious practices and she laid out how they have broken it down.

Are you all just sitting there thinking, you know, a gun is a gun is a gun and whoever has the gun we have just got to go get the gun if they do not legally have the gun? Are you doing something—we might say, your agency depends upon the answer, in part.

Mr. MAGAW. Yes. We are doing a lot in that area. Especially where it is in the public spectrum anyway in terms of the colleges, the universities around the country, the medical professions, any of

that, that is in the public spectrum we are collecting. Any of it that other Federal law enforcement units collect, we share that information back and forth so that we are informed.

Senator BIDEN. Mr. Noble.

Mr. NOBLE. Yes. And we are also, it is very important for ATF to—and I know that you are aware of this—to carve out an area in which it has expertise but to share that expertise with other entities. So what the Justice Department through the FBI and the Treasury Department through the ATF have done is that we have been concerned with these groups that have predilection or desire to arm themselves through unlawful means or to gather unlawful arms. And to try to think about how they approach the arming of themselves, how they are able to amass weapons without law enforcement becoming aware of it. How do they meet? How do they gather? How do they communicate with one another?

We know that Internet is being used quite frequently and sharing information on how to build bombs, and how to perpetrate arson and so forth. And also we are thinking about and the Treasury Department has one success as of late to speak about, how can we address the harms that these groups might be desiring without a violent confrontation?

There is a group in Montana that amassed a whole slew of illegal firearms, automatic weapons, antitank vehicles, and so forth. And what the IRS did was the IRS contacted them and said you are at risk of losing your tax-exempt status unless you get rid of these weapons and this armament and it worked.

And we did not go in with a raid and no one was killed. And no one was put at risk. So we are thinking about it but we are trying to do it in an effective fashion without running into unnecessary conflict with other entities that also have jurisdictional concerns in this area.

Senator BIDEN. If Jim Jones had not gone to Guyana and he happened to be in Selbyville, DE, or happened to be—because neither one of you are being responsive to my question. One of the criticisms of you all is that you do not understand the mentality and the reason why the people who are acting illegally act the way they do. You did not understand the argument, the criticism goes, you did not understand how a David Koresh's mind worked. You did not understand how—I am not saying that is right or wrong, but that is one of the criticisms.

One of the criticisms is that you did not take enough time to learn how these people think “these people.” Had a Jim Jones been in southern California or in the desert that the Senator from California just saved for California, with this cult, instead of having Kool Aid, had they had these, and you went in to get kids out, people would be saying, wait a minute, you should have known they were all going to drink Kool Aid. You should have known they were all going to kill themselves.

What I am trying to figure out is whether you are trying to figure out what makes people act the way they do. They talk about cult mentalities, they talk about the way in which these groups interact. I do not know whether it is a bunch of hokum or not. I do not know whether these sociologists know what they are talking

about or these psychologists know what they are talking about or these psychiatrists know. But do you know, do you know?

It seems to me it would be something that you would be sitting down thinking about because law abiding citizens, unless they are organized crime, they do not get together and amass all these weapons. People either see God coming on the second coming or people who drink Kool Aid laced with arsenic, they are the folks that do this stuff.

And what are you doing to figure out how they think?

Mr. NOBLE. Senator, I am trying to be responsive to your question. I may not give you an answer that is acceptable but we have—

Senator BIDEN. The answer would be we have contacted the sociology departments at Harvard and Yale and Stanford. We have a group of people sitting down figuring out—I can give you the answer. That is the right answer. That is the right answer.

Mr. NOBLE. Perhaps I could approach it slightly differently and I am sorry you are upset because I did not understand that was the thrust of your question.

Senator BIDEN. What are you doing to try and figure out how these groups, they're mounting, what are you doing to try to figure out what makes the psychology of the group work together?

Mr. NOBLE. Senator, with all due respect, do you know how many groups there are out there amassing firearms or thinking about crazy sorts of criminal activities that they could be engaged in? There are so many groups that all we did was spend our time investigating these groups we would be writing theses.

Senator BIDEN. No, no, no, this is the last time I will try it and then you are on your own. The last time I will try.

They all have an organizing principle and it is not a gun. The organizing rationale is that they either think the Government is coming to take over and take their guns. They think that America has lost its notion of free enterprise. They think that there are too many homosexuals in America. They think that the Lord has not looked upon us. There is an organizing principle other than the amassing of the guns. That is not their organizing principle that gets those folks all to decide they are going to all hang out in a compound in Waco—not a place you would go for vacation.

Mr. MAGAW. Sir, in terms of ATF, if it is a group that is violating one of our jurisdictions, we spend a great deal of time learning and being informed about them. If they do not have any of our violations where we learned about them is trading information back and forth between other Federal units—

Senator BIDEN. I got it.

Mr. MAGAW [continuing]. Who are working with them.

Senator BIDEN. I appreciate it. Sorry. It is obviously an ad hoc determination you make. When you find out a group has broken a law then you try to find out what the organizing principle and psychology is so you do not make the mistake again of not knowing, not that you could be clairvoyant, so you have a better guess as to whether or not a screwball like Koresh is going to set everybody on fire.

You heard people testify, your critics say, if you really had taken the time to know you could have figured out that Koresh is likely

to do what he did. I think that is incredible Monday morning quarterbacking, and I do not know how you could have done that but you have people saying that. So you have answered my question, it is an ad hoc judgment. Once you realize the law is being violated then you try to figure out what motivates those folks so you know whether to negotiate or break down the door, right?

Mr. NOBLE. That is very well put, I wish I had thought of it earlier.

Senator BIDEN. Well, that is the problem, that you did not think of that earlier. If that is all you are doing, that is the problem.

Mr. NOBLE. Senator, and I know you have been so supportive, but there is nothing that concerns American citizens more than the thought that a firearms agency, whose responsibility it is to enforce the firearms laws is investigating them for things beyond that. I know the way you phrased it, it is perfect but, with all due respect, ATF on this one case, with Waco, with David Koresh, said before the raid that if they did not do something one of the risks was that David Koresh and his followers would engage in a mass suicide. They predicted it. When they first said it, when the raid first happened between February 28 and April 19, expert after expert criticized ATF and said, false. They just made it up.

Senator BIDEN. What was the basis of that observation? Was it just that you all are instinctually good or was it that because you had experts in the area say that people who gather like this are people who may put themselves away like this?

What was the basis of that original judgment that you happened to be right about and other people did not think you were right about?

Mr. MAGAW. Where the best information came from, sir, was the Davidians themselves, former Davidians. That is where the best information and that is where the ATF personnel drew their conclusions from at that time.

Senator BIDEN. Good, that answers my question.

Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Biden. I want to say to you that it is always easier to look at things in retrospect. We can always find lots of fault after the fact and a lot of people have with regard to this.

I think what Senator Biden is saying, among other things, is that when we get into these situations we have got to presume a lot of things. We have got to go beyond what seems to be normal. And just do our very, very best to be able to be prepared for the worst. And in this particular case there were some failures. And naturally we are looking at it in retrospect. And it is clear they were failures and they are easy to criticize.

It is very tough to be a law enforcement official. It is very tough for law enforcement agencies to know exactly what is going to happen in advance and in this particular case there were lots of mistakes. The purpose of these hearings is not necessarily to rehash those. You have been through enough of that. We know what the facts are. You know what the facts are. You have admitted there were mistakes. The FBI has admitted there were mistakes. The

purpose of these hearings is to see if we can alleviate them in the future.

And if we can do what is right to have everybody in our country respect and support law enforcement. And or at least most everybody in our country that thinks clearly.

So that is what we are trying to do.

Senator FEINSTEIN. Mr. Chairman, may I say one thing?

The CHAIRMAN. Sure.

Senator FEINSTEIN. I think and I think I sense the frustration of Mr. Noble because if you want to look across this country at all the potential threats that are out there you could not count them below 1,000, certainly, real potential threats. And I think this is in a very difficult area, something brand new, which is fanaticism and religion together that creates, whether is fundamentalist Islamics or the Branch Davidians, or the People's Temple or the MOVE, I think we are going to have more and more of these as time goes on.

And I think what the committee is interested in and rightly so is seeing that the right apparatus is in effect to be able to handle it. And I am very heartened by the changes that have been made and by the fact that I think now, not in any way to stultify you or prevent decisions from being made, but have a process that is broadly, that expands, that goes out, that really seeks information. You mentioned the Branch Davidians were the best source. Well, you never really know the motive of someone talking to law enforcement from a group like this, either. So I think it is all very difficult for you.

But what I think what we want to know is that there are the procedures and the process in place so that it is the best command situation, the best decision making that can possibly be made at a given point.

Mr. NOBLE. I would just add to that, Senator, I appreciate your comments. That one of the things we have been grappling with at the Treasury Department is how do we, as a Federal Government, as Federal law enforcement components approach these very difficult issues? And I know one thing that this committee and other committees have been concerned about is that we do not go about duplicating items that already exist.

So that the Justice Department and the FBI has a tremendous behavioral scientist component that ATF and Treasury works with that component. One of the reviewers from the Treasury Department's review said that the Treasury Department should have a national response team. Well, there is already a Hostage Response Team. What we are trying to do is work collectively with entities that already exist to make them better and in addition to that, reach out for experts who might have information about a particular group if that particular group is suspected of violence.

Senator FEINSTEIN. Can I just say one thing?

Mr. NOBLE. Sure.

Senator FEINSTEIN. I think it is a big mistake to leave everything in an HRT or an SRT or anything like that. There has to be a command responsibility.

Mr. NOBLE. Absolutely.

Senator FEINSTEIN. And I think that the key is probably bringing in people who are specially trained and not leaving it up to the local people.

Mr. NOBLE. Right. And I think one thing the Treasury Department, what we have done and I think it is apparent in this review and it is apparent in other reviews. In this review we have brought in three independent reviewers, we have brought in six tactical operations experts. In the forward-looking review, Dr. Ammerman is someone that the Federal Government brought in to look at this problem.

One of the things we have to do and I do not know how we can do it in a systematic fashion, but what we have to do is to figure out if there are experts whom we can draw on as matters arise. And I think that is your point, as well, that there has to be an integration between the behavioral scientists, the psychologists, and the tactical operations experts as well. And it has to be done collectively as a Federal Government, not each department having its own. That was my point, thank you.

The CHAIRMAN. That is good. You have to do all of these things in a way that does not lead to oppression by the Federal Government. That is probably behind some of the irritations some of those on the right are so concerned about and some on the far left are concerned about.

So you really have a tough job. I think if there is anything that comes through to us it is that you are in a position where it is very, very difficult and the American people need to know it.

Senator BIDEN. Mr. Chairman.

The CHAIRMAN. Yes.

Senator BIDEN. I think Mr. Noble just very much clarified what I was trying to get at. Let me put it another way and I will try one last chance. And as you know, you are a friend. I am adamantly opposed to the merging of ATF. I am adamantly opposed to you being put into the FBI or any other place. But I thought I was helping you make your case. I obviously made it harder for you to make your case.

Let me try it one more time. Again, you get a call tomorrow, there is a group, whatever they call themselves, I am afraid to say something because there may be such a group. But you know, the Xanadu Followers of the Lord, OK, God, I hope there is no such organization. Now, they are holed up in their compound and it turns out they have a significant stash of weapons. You have overwhelming evidence to know that.

In addition to going to internally within ATF to try to figure out, assuming you have no informant, you have gotten a call from the local folks saying, by the way, a guy just delivered 17 barrels of napalm to this place and I just delivered it. You have no other information.

Who are you going to call? Or in addition to your internal expertise, are you going to call the Justice Department and say, who do you have that knows anything or deals with this group that aligns themselves with the third book of the Bible that says such and such? Who are you going to bring in? Who are you going to look to? Are you going to look, are you going to pick up the phone and

call the leading experts in the Nation who know what makes these folks tick or might know what they tick?

How do you go about it now?

Mr. MAGAW. I apologize. I thought I explained that when you were here but it must have been before you came in. We have a list of experts in almost every area that we can think of, that the Department of Justice can think of, that the behavioral sciences throughout the universities can think of as experts. Should something like that occur tonight, within the hour, our Intelligence Division chief and some of our personnel can be communicating with that individual.

We are prepared to bring them into the investigation in terms of advising us along the way. And that is the way that I have to approach it. I, in these controversial jurisdictions that we have, if I was collecting information just based on groups, this body would have to be——

Senator BIDEN. I would be the first one calling you up asking the chairman. In the old days I would call you up and now I would ask the chairman to call you up because that is not appropriate.

You have answered the question and I think it is very important for folks to know that you are not merely an outfit that has the tactical capability of going and arresting people. That you sit down and think through, and you go to all of the available experts in what is a mounting body of evidence that gives profiles to—I mean you go to the FBI and he and I, I do not know that he has, I expect, get a death threat on a telephone. The FBI sits and listens to the voice. They have a protocol that is there to determine whether it should be taken seriously. And they are not always right, but they try like hell.

And it gives people some solace to know that they are amassing as much information on behavioral reactions of certain groups of people and certain profiles. That is the only point that I wanted to make for you and I have now assured that you will probably be merged notwithstanding my support for you. That is a joke. The hearings have gone well, Mr. Chairman. I should have let well enough alone and not raised the issue except that I think it has to be raised and I think it has to be on the record that people know that there are sources you look to beyond our own agency that do not require you to be merged with another agency to acquire that capability.

Mr. MAGAW. In fact, we have panels that meet monthly to discuss all these kinds of things between all the Federal units. And it really has expanded since Waco.

The CHAIRMAN. There is a lot of coordination is what you are saying.

Well, thank you, Senator Biden. I want to thank both of you for appearing and I think this has been a good hearing today. Tomorrow it may be a little more dramatic. But the fact of the matter

is that I am pleased that we are moving ahead trying to correct difficulties and doing what is right in law enforcement and the American people can feel good about it, I personally believe.

So, with that, we will recess until 9 a.m., when I will try to start tomorrow morning, if we can.

Thanks so much.

[Whereupon, at 4:13 p.m., the committee recessed, to reconvene at 9 a.m., Wednesday, November 1, 1995.]

THE AFTERMATH OF WACO: CHANGES IN FEDERAL LAW ENFORCEMENT

WEDNESDAY, NOVEMBER 1, 1995

**U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The committee met, pursuant to notice, at 9:06 a.m., in room SH-216, Hart Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee), presiding.

Also present: Senators, Grassley, Kyl, DeWine, Leahy, Simon, and Feinstein.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. We will begin our hearings this morning. The purpose of our first panel today is to set forth the established practices and procedures used in negotiating hostage or barricade situations. So, I would now like to introduce the panelists.

Frank Bolz is a former police officer who acted as the chief negotiator for the New York City Police Department for over 10 years. During that time, Mr. Bolz personally negotiated 285 incidents resulting in the safe release of more than 850 hostages without the loss of a single life. That is a very admirable record. Additionally, he has written extensively on the art of negotiations.

Ken Lanning, who will be with us shortly, is the FBI's leading expert on cults and the sexual victimization of children.

We are happy to have you here, Mr. Bolz, and we will turn the time over to you.

PANEL CONSISTING OF FRANK A. BOLZ, CONSULTANT, FRANK A. BOLZ ASSOCIATES, INC., HUNTINGTON STATION, NY; AND KENNETH V. LANNING, SUPERVISORY SPECIAL AGENT, BEHAVIORAL SCIENCE UNIT, FEDERAL BUREAU OF INVESTIGATION, QUANTICO, VA

STATEMENT OF FRANK A. BOLZ

Mr. BOLZ. Thank you, Mr. Senator.

First, if I may, the taking of hostages, either a surreptitious kidnapping or a confrontational hostage taking, is a phenomenon that has been going on for centuries. But it was the incident on September 5, 1972, at the Olympic Games in Munich, Germany, and the tragic deaths of the 11 Israeli athletes that generated a new response to this old crime from members of law enforcement.

It was recognized by a leader of the New York City Police Department that this new demonstration of an old crime could come to New York City. It was realized that we should be prepared to deal with it in a new and innovative manner.

In late September 1972, a committee of officers from just about every facet of the New York City Police Department came together and created and instituted the guidelines for hostage takers and barricaded felons. I was designated to represent the detective division.

We disseminated the policy and principles and procedures from the top-ranking officers down to the mid- and lower-level supervisors. Primary in these guidelines was the policy that life must be the most important consideration. Property or evidence can be recovered and/or people can be recaptured, but life, once taken, is irreplaceable.

My colleague, Dr. Harvey Schlesberg, a police officer who became a clinical psychologist, and myself, we were given the task to devise negotiating procedures and to select and train the first negotiating team. I assumed the role as commanding officer of the negotiating team, a position that I held for my last 10 years in the department. And during that time, I negotiated almost 300 incidents, as the Senator indicated, and we brought about the release of over 850 hostages without the loss of any life of a hostage or an officer, and we only lost the one perpetrator who committed suicide before we were able to re-establish contact with him.

Many of the tactics utilized at a hostage situation are similar to those used in the barricade incident. I guess the key element that differentiates the two are the presence of an innocent victim in the former—victims whether explicitly identified by the perpetrators as “tickets to freedom” or perhaps more subtly communicated or displayed by videotape.

The NYPD guidelines and procedures have been shared with Federal, State, and local law enforcement agencies throughout the free world. It has been over 23 years since we started sharing these procedures. Some agencies have accepted them totally; some have made their own variations; and some perhaps have taken shortcuts.

But let's take a moment or two to go back to the basics. Just as musicians practice their scales and the ballet dancers go through their basic positions, so, too, the hostage recovery people—the negotiators and the tactical officers—must remember and practice their procedures and training from the basic rudiments.

If I may be permitted, Mr. Senator, I would like to take you through a quick and cursory basic presentation of the hostage recovery program.

The CHAIRMAN. If we can dim the lights, that would be great.

Mr. BOLZ. First, if you will, let's look at the different types of hostage takers.

The CHAIRMAN. Senator DeWine, why don't you come over and sit by me, and you will see this better.

Go ahead, Mr. Bolz. We are very interested.

Mr. BOLZ. We have sort of oversimplified the different types of hostage takers into three major categories. The first we name as the professional criminal, and when we say professional criminal,

we are not talking about the David Niven with the small mask on after the jewels in Malta or something like that. We are talking about the guy who hits the local convenience store on a Friday because he has to pay his bills on a Saturday.

This guy or this person usually is intent on committing a larceny, a crime of some sort, usually a larceny. And when a confrontation takes places between him and the police, his main thrust is he wants to escape. He wants to get out. And oftentimes, almost as though these people attend seminars themselves, you will hear the same expressions being used: Hey, cops, these are my tickets to freedom; I'm getting out of here using these people.

Now, the professional criminal in the first 15 or 20 minutes of the confrontation with the police becomes the most dangerous for the police to deal with because he is going through a panic reaction, that fight-or-flight reaction. He will strike out at what he perceives to be creating this panic, and that would be the police officer.

After the first 15 minutes or 20 minutes, that professional criminal becomes the easiest of hostage takers to deal with because he is rational, and he recognizes it is probably easier and safer for him to deal with the criminal justice system rather than to deal with the end of a police officer's gun.

The second type are what we call the EDP, emotionally disturbed persons, or inadequate personality, or what some have called the loners or the losers. Basically, their intent is to get attention. If they feel that they have gotten a disservice from either the bureaucracy, from government, or from someone else or from a girl friend, they are looking for attention. If they were to lay down on the ground and stamp their feet and cry and bang their head on the ground, nobody would pay attention to them. But if they take a knife or a gun and put it to someone's head, everything stops. People pay attention to them.

What differentiates them between the professional criminal and themselves is the fact that they don't want to escape. They want to keep this going because they are on a stage. They want to keep it there.

The CHAIRMAN. What does EDP stand for?

Mr. BOLZ. Emotionally disturbed person.

The CHAIRMAN. Emotionally disturbed person. OK.

Mr. BOLZ. Now, that doesn't mean a crazy person.

The CHAIRMAN. No, no, we understand.

Mr. BOLZ. That means a person who just can't handle things about them. So we utilize that expression.

The third are the groups, what we call the loose group, what you might find in a prison situation where a spontaneous riot breaks out and they may grab hostages. They, too, are looking for attention. Their particular wants may vary. They may want change in their food. They may want change in visiting procedures and so on.

Then the 3B would be the structured group, what we would find in a terrorist organization, where actually they are looking for a stage for their particular group, and their wants also may vary.

Now, those are the basic three types of hostage takers, and, again, it is sort of an oversimplification. But the tactics that you

use to deal with them will depend upon which category the hostage takers would fit into.

Now, basically, there are three elements of any law enforcement operation, but especially in hostage/barricade situations. And the first three things that make up the elements to a good investigation would be intelligence, communication, and firearms discipline.

When we talk about intelligence, the information about everyone involved, the location and so on and so forth. Now, all of that intelligence, if you do not communicate it to the people who require that intelligence, it is wasted. If you just gather it and you are keeping it yourself without disseminating that intelligence to other people involved, it is wasted.

And then when we speak about firearms discipline, we are talking about from both facets. We are talking about maintaining control. If you have to use deadly physical force to save the life of an innocent person to stop the perpetrator from committing a crime that may hurt an innocent person, you may have to use deadly force with a firearm. On the other hand, we want to make sure that we do not use deadly force unless it becomes an absolute necessity. So that is where we talk about firearms discipline.

Now, in terms of intelligence, we have broken the intelligence down to who, what, when, where, how, and why.

Who are involved? Who are the hostages? Who are the perpetrators? We want a complete description of these people, photographs if available. We want to identify the perpetrators, and when we identify the perpetrators and the hostages and we make checklists and we have actual biographies as best we can of each individual one, we will number the perpetrators by number and we will letter the hostages by letter to ensure that there is no mix-up. When you talk about No. 1 and No. 2, you know that you are talking about perpetrators. When you talk about A and B, you know you are talking about hostages to ensure that there is no mix-up.

You are also going to look for the criminal backgrounds of the perpetrators. You also want to know about the psychological backgrounds, if you can, not only about the perpetrators but also about the hostages as well.

What precipitated the incident? Was it a family dispute that got out of control? Was it a robbery that went wrong? These are things we want to try to find out about as well. Was this a result of some application of court process that brought about this particular confrontation between law enforcement and so on? Or is this person a disturbed person or someone looking to use this as a stage for what they are going through?

When did this incident take place? This is significant because we want to know whether or not a deadline has been set. And if the deadline has been set before law enforcement gets there, we may be dealing with only moments instead of hours, as we thought we might have. So that becomes significant there as to when it took place.

Where? Where are the hostages located? Where are the perpetrators located? Are there floor plans available? Can someone improvise a floor plan, draw something up so we know where the different people are in the event we have to probe to try to make a rescue of the people who are being held inside?

How was the takeover done? Oh, by the way, getting back to "where," this also becomes important if it is a significant location. There are certain locations due to either religious situations or gang affiliations or political activism that the insurgence of police at that location may create a conflict, and so that is another reason why we must know where these things are.

How did this take place? How was the takeover accomplished or precipitated? Are there any weapons or explosives involved? And we must always take the worst-case scenario. If somebody said there is an explosive in there or there is a gun in there, we must presume that there is a gun. We must presume that there is a weapon in there. Could we be embarrassed if there is no explosive in there? Sure we could be. But embarrassment doesn't kill you. But if you make a mistake and you go in there and it is a bomb, then you could get hurt or some of your people could get hurt. So that is why it becomes important to know that.

Then, of course, the "why" can be a combination of reasons. It may be psychiatric, it may be psychological as to why he is taking hostages or holding these hostages, and it may be the outcome of some previous conduct somewhere else down the line. And the negotiation should have this information because this will permit him to ventilate the perpetrator, to let that person talk and get out this emotion that is built up in him.

Now, the command structure in managing a hostage situation or hostage/barricade incident can take various formats, but the basic format should be the following: The incident C.O., the incident commanding officer, in New York City one of the things we did was to make sure that we would use a patrol officer, a patrol ranking officer and not a tactical officer and not a negotiating officer, because the negotiators and the tactical team, they were city-wide. And when they got done with their job, they would pack up their weapons or pack up their bullhorn and leave whatever was there. If they created any kind of turmoil in that particular community, the patrol officers would have to deal with it. So it was felt that it was obvious that it should be a patrol officer who would be the incident commander. Negotiators would be staff to the incident commander, and the tactical team would also be staff to the incident commander. The incident commander would make the decision as to what tactics would be used by the tactical team and what tactics would be used by the negotiators.

Now, there are basically four courses of action that the incident commander could call for. The first course—and, by the way, there is no significance to their particular location on this chart. But the first one we will deal with is rescue/dynamic entry. If there are hostages inside, we would be going in for a rescue. Were it just a barricade situation, then we would be making what we call a dynamic entry to apprehend the perpetrator.

Now, before we would go in on a rescue or dynamic entry, we would need that intelligence, as I just indicated before, the who, what, when, where, how and why, before we go in. We would have tremendous concern for the possibility of booby traps. The perpetrators may change clothes with the victims so that it would appear that the perpetrators are actually the good guys and the good guys

appear to be the bad guys. So those are concerns that we would have to take into consideration.

The use of sharpshooters, again, if it is deemed that because of some intelligence about the perpetrator that he may or is imminently going to harm the innocent people inside, if it appears that that person is going to kill or severely injure some person inside, the incident commanding officer could request the use of a sharpshooter to stop the perpetrator, not to kill the perpetrator necessarily but just to stop him from what he is doing. If, unfortunately, the perpetrator does get killed, that is unfortunate. But the intent is never to kill; the intent is to stop the perpetrator from going into a situation where he could hurt an innocent party.

The third course of action he could have are chemical agents, but before we use chemical agents, again, intelligence, information: the layout of the building, does it have any kind of flammable materials inside? Are there any victims inside, any hostages or people inside with emphysema or some other respiratory disease? Are there any children inside with a small lung capacity? If there are any children inside, the use of tear gas would be put aside. We would not use tear gas when children are involved.

And so these are the three violent, what we call violent courses of action, and the fourth is contain and negotiate. Lock the perpetrators into the smallest area practicable and apply time. Time will permit the police, the law enforcement people, to gather intelligence, to gather manpower, to gather equipment. Time will permit perpetrators to get tired, to make mistakes, and time will also permit the biological functions to take place where people are going to either get tired, fall asleep, or have to come out to use the toilet facilities or whatever. So these are the benefits that we get from containing and negotiating, locking them into the smallest area possible.

If that fails, if negotiating fails, we can always escalate up. But if you engage in a violent course of action, you cannot step back and say, hey, now I want to talk to you. You are committed to that violent course of action.

Now, in terms of the incident itself, finally, we must remember in all of these situations that life is the most important consideration. In New York City, our tactical team is made up of the Emergency Service Division. The Emergency Service Division is rescue-oriented. Each member of the Emergency Service Division is a State-certified emergency medical technician. They function doing things very similar to fire department rescue teams. They get people out of building collapses, automobile crashes. So 90 percent of what they do is rescue, rescue, rescue-oriented. Yet they can also function as the tactical team if it is necessary to apply deadly physical force to stop someone from hurting an innocent party.

Senator, Mr. Senators, if you have any further questions, I would be happy to answer any that I can for you.

The CHAIRMAN. Well, thank you so much, Mr. Bolz. We appreciate that recitation. That really helps us a lot, and we can see why you were very successful in your career in negotiation. We will listen to Mr. Lanning first, and then we will have some questions for both of you, but you have written extensively on the art of negotia-

tion. If you have any of your writings, I would like to have copies of them, if you will send them to me.

Mr. BOLZ. Yes, sir.

The CHAIRMAN. I appreciate it.

The CHAIRMAN. Now, Mr. Lanning is, of course, the FBI's leading expert on cults and the sexual victimization of children. So we are honored to have you here, Mr. Lanning, and we look forward to taking your testimony at this time.

STATEMENT OF KENNETH V. LANNING

Mr. LANNING. Thank you very much. My name is Ken Lanning. I entered on duty with the FBI in 1970 and have been involved in studying the criminal aspects of deviant sexual behavior since 1973. I am currently a supervisory special agent assigned to the Behavioral Science Unit at the FBI Academy in Quantico, VA, and since 1981, I have specialized in training, research, and consultation in cases involving the sexual victimization of children.

I am a founding member of the board of directors of the American Professional Society on the Abuse of Children, commonly known as APSAC, and am currently a member of their advisory board. I am the FBI's representative on the U.S. Interagency Task Force on Child Abuse and Neglect, and I am also a member of the Advisory Board of the National Resource Center on Child Sexual Abuse and the Boy Scouts of America Youth Protection Expert Advisory Panel.

I have made numerous presentations at major national and regional conferences on the sexual victimization of children, child abuse and neglect, and missing and exploited children. I have testified before the U.S. Attorney General's Task Force on Family Violence, the President's Task Force on Victims of Crime, and the U.S. Attorney General's Commission on Pornography. I also have testified on six occasions before the U.S. Senate and the House of Representatives and many times as an expert witness in State and Federal court. I have consulted on hundreds of cases involving deviant sexual behavior and the sexual victimization of children and have worked closely on many cases with agents assigned to the Investigative Support Unit as part of the FBI's National Center for the Analysis of Violent Crime in Quantico, VA.

I have published articles in the "FBI Law Enforcement Bulletin" and other professional journals and am a chapter author in five published books. I am the 1990 recipient of the Jefferson Award for Research from the University of Virginia for my research on the ritualistic abuse of children. I have authored training monographs that have been widely distributed by the National Center for Missing and Exploited Children and have lectured before and trained thousands of police officers and criminal justice professionals and am considered to be a law enforcement expert on the sexual victimization of children.

In 1983, in my case consultation role in the Behavioral Science Unit, I began to be contacted, with increasing frequency, by criminal justice professionals about cases in which children were alleged to have been sexually abused within the context of satanic or other cults. In order to better evaluate and assist on these cases, I embarked on a journey of self-education about satanism and cults. As

a result, I developed a significant but probably less well known and less extensive expertise in these areas as well. Focusing primarily on their role in the sexual abuse of children, I learned as much as I could about satanism and cults. Maybe the most important thing I learned, however, was that the subject of cults is an emotional, complex, and polarizing topic about which it is difficult to get objective, accurate, and reliable information. In fact, defining the term seems almost impossible, with many scholars believing the term is a negative, subjective, judgmental word which should not even be used. I do not believe it is necessary to precisely define the term in order for law enforcement to properly investigate possible criminal acts.

I discovered that most individuals, including even some normally skeptical law enforcement officers, accept information disseminated about cults without critically evaluating it or questioning the sources. Officers who do not normally depend on religious groups for law enforcement criminal intelligence, who know that media accounts of their own cases are notoriously inaccurate, and who scoff at and joke about tabloid television accounts of bizarre behavior sometimes embrace such sources of information when presented in the context of cult activity. I first published my concerns about these observations in October 1989 in "The Police Chief" in an article entitled "Satanic, Occult, Ritualistic Crime: A Law Enforcement Perspective."

It is not the role of any law enforcement agency, including the FBI, to determine or maintain lists of which groups are or are not cults. Instead, it is the role of law enforcement to utilize understanding of group or religious motivation to investigate any such group that violates the law.

Specifically concerning the Waco situation in February to April 1993, I did not travel to Waco, TX, during this time, and my only involvement consisted of two telephone conversations with FBI agents who were there. On one evening during the siege, I was telephonically contacted at my home by Supervisory Special Agent Greg McCrary who was one of several agents from the FBI Investigative Support Unit who were at Waco, TX. Knowing my expertise in child sexual abuse and cults, SSA McCrary was looking for some guidance in evaluating allegations of such activity by the Branch Davidians. SSA McCrary advised that the children leaving the compound were being interviewed and evaluated by sexual abuse by non-FBI experts. Without being provided specific facts but based on my experience with cult abuse allegations, my advice was to attempt to assess whether the interviews and evaluations were, in fact, being done by trained objective professionals before taking action based on the information provided.

On a second occasion, I received a call at my office from a field hostage negotiator who was at Waco, TX. During this call, we had a brief discussion about the difficulties in evaluating the sincerity of someone's religious beliefs. These two brief telephone calls were my only input into the siege at Waco.

In summary, my knowledge, experience, and expertise about the sexual victimization of children and cults would cause me to advise any law enforcement agency dealing with such issues to objectively and continuously assess and evaluate their intelligence, to chal-

lenge all sources of information, and to try as much as humanly possible to keep their personal emotions under control and out of the case. I have no reason to believe, however, that the negotiation and behavioral science FBI agents at Waco did not possess this same perspective or that my presence or involvement would have resulted in a different outcome. My expertise was known to several agents at the scene, and I was available if needed.

Thank you very much.

[Responses by Mr. Lanning to questions from Senator Simpson follow:]

QUESTIONS FOR SSA KENNETH V. LANNING FROM SENATOR SIMPSON

Question 1. I would like to examine the standards and guidelines by which you judge cults. In other words sir, what in your mind differentiates and extreme—but nonetheless legal—religious organization from a cult that is judged to be so dangerous that it needs to be laid siege to?

In your view, which category did the Branch Davidians fall into? Why?

Answer 1. As I testified on November 1, 1995, the term "cult" is almost impossible to define. Many scholars believe the term is a negative, subjective, and judgmental word that should not even be used. Its use may even play a part in prejudicing investigators who should be objective fact-finders. It is not the role of any law enforcement agency, including the FBI, to determine or maintain lists of which groups are or are not "cults." Instead, it is the role of law enforcement to utilize understanding of group behavior or religious motivations to investigate any such group that violates the law.

Extreme religious views, in and of themselves, are of no interest to law enforcement unless they result in violation of the law. The determination that a group needs to be investigated should be based on objective, reasonable suspicion of criminal activity. The determination that a group is so dangerous that it needs to be laid siege to should be based on objective, articulable facts that demonstrate that someone's personal safety is at risk.

Based on my limited and public source knowledge of the Branch Davidians, it appears that they were a religious group with nontraditional beliefs who, for almost fifty years, existed with little or no involvement with criminal activity. At some point, however, law enforcement came to suspect or believe that the group, or some of its members, did for some reason become involved in significant illegal activity. An investigation began. At a later point in that investigation, a siege was deemed necessary to protect personal safety. Because criminal acts can be motivated by religious beliefs does not mean they can be ignored by law enforcement. Therefore, at different times, the Branch Davidians fell into both categories you mention.

Question 2. We have all heard the complaints in this age of government downsizing that we have too many agencies doing the exact same thing. As you well known, we have a number of overlapping federal law enforcement agencies all of which are further complemented by law enforcement at the state and local level—so there does appear to be a level of duplication present.

The questions I would like you to answer are as follows;

(1) Is there a need for the Bureau of Alcohol Tobacco and Firearms that could not be fulfilled by another government law enforcement agency?

(2)(A) Couldn't ATF responsibilities be folded into the FBI? (B) What would be the potential problems with taking such action? (C) What would be the benefits?

Answer. As the Attorney General has previously testified, the work of the Bureau of Alcohol, Tobacco, and Firearms is critical to the safety of our country and this agency performs necessary law enforcement functions which must be continued. It has been the Administration's position that a merger of these duties into another government agency is not warranted since the BATF has developed great expertise in this area and effectively discharges its duties.

The CHAIRMAN. Did they call on you, Mr. Lanning, at all for your advice and counsel in this area?

Mr. LANNING. Just those two calls that I mentioned.

The CHAIRMAN. Just the two, and that is all.

Mr. LANNING. That was all.

The CHAIRMAN. There was no other input?

Mr. LANNING. I had no other contact or involvement.

The CHAIRMAN. They didn't ask you to come down there, didn't ask you to interview any of the children?

Mr. LANNING. No, I did not.

The CHAIRMAN. Did the FBI have access to and still have copies of reports concerning the investigation of and interviews with children?

Mr. LANNING. I am not sure. I have not seen such reports. I don't know whether the FBI has them. I know that the children were interviewed and evaluated by various experts. Whether the FBI has copies—

The CHAIRMAN. Who were not FBI experts?

Mr. LANNING. They were not FBI agents.

The CHAIRMAN. Would you check and see for me if they did, and I would like to receive copies, if I can.

Mr. LANNING. Yes, sir.

The CHAIRMAN. OK. I will be back to you in a minute. Let me talk to Mr. Bolz.

Mr. Bolz, I really respect you. I respect both of you. We are honored to have both of you here. You have had a lot of experience. You have been in a lot of tense situations. And you are one of the top people in the world in this area.

Mr. BOLZ. Thank you.

The CHAIRMAN. But one of the things that I found most disturbing in the committee's investigation is the tape I am going to play in a moment for everyone to hear. Now, this tape was played over the loudspeaker at the Davidian complex in the middle of the night during the 51-day siege. The committee has asked the FBI to explain how and why they would play a tape of rabbits being slaughtered during the siege. We haven't received an answer from the FBI, and, of course, I intend to ask the FBI about it when they appear before us.

But in the meantime, I would like to ask you, Mr. Bolz, to listen to the tape with the rest of us and comment on whether its use is appropriate in negotiating or barricade situations like this one. So if we could put on that tape, I would appreciate it.

[Audio tape played.]

The CHAIRMAN. That was a tape that was played of rabbits being slaughtered. And, frankly, I would like to have your opinion on it.

Mr. BOLZ. Well, if I may, Mr. Senator—

The CHAIRMAN. Whether that is an appropriate approach towards negotiations and resolving these kinds of matters.

Mr. BOLZ. The use of sound, the use of music, and the use of sound to raise and lower anxiety is something—it is a practice that we do use from time to time. But this type of sound, the use of the sound of rabbits being slaughtered, when I heard that is what they were using, I was appalled, because many times we have heard people refer to children—you know, the guys says, Boy, he is married 15 years and he has got 12 rabbits, referring to his children. And when I heard them using a tape that had the sound of rabbits, it comes into my mind, first of all, would this be something that would give people inside there leave to do something like this, to slaughter the children if this were to be used as some reason for them to pick up on this and to do that.

The use of music and the use of sound into a compound such as the Waco situation is something we have used many times, and the intelligence, finding out what the people like or don't like, what type of music, we would play this music almost subliminally. In other words, we would find out that they disliked, let's say, heavy metal and so we would play this heavy metal for a while very, very softly. And then when our negotiators are going to contact the people inside, we would fade out the heavy metal and fade in, let's say, some classical music that we know from intelligence that they do like. And so they will be hearing music that they do like and something that they do like when they first hear the voice of the negotiator and they will make that connection.

The CHAIRMAN. So they can transfer the——

Mr. BOLZ. Right, that relationship.

The CHAIRMAN. Transfer from the offensive music to the decent music.

Mr. BOLZ. Now, there are times where you may want to raise anxiety, and the use perhaps of the train crash, that might have been a good tape to use to raise anxiety, because, heck, when I heard that, that too shook me up as it went.

But this specifically, that particular tape, really got me upset when I heard that being played because I thought it was very, very inappropriate to put in there, even if it were just to give the idea to the people inside, hey, let's harm these children and we will show those people outside.

The CHAIRMAN. How would they be able to figure out that that was the slaughter of rabbits?

Mr. BOLZ. I thought when I first heard it that it was children crying. A quick listen to that, I heard children crying like that. How they know it was rabbits being slaughtered, and then by saying it was rabbits being slaughtered, I think that only compounded the thing.

The CHAIRMAN. Well, I agree with you. It seemed like an awfully stupid thing to do. And your description of the three different categories of the types of hostage takers I thought was very, very good. Sometimes there is an overlay, isn't there, among the three? In other words, a person could be a common criminal but also have an emotional disturbance.

Mr. BOLZ. Exactly.

The CHAIRMAN. Plus the other third category. So it isn't necessarily as simple as just three categories. It could be overlays——

Mr. BOLZ. Well, we have oversimplified that. Of course, you could hone those, and the behavioral science people will be able to, and the FBI have worked with them for many, many years, and we have a very good relationship. And the FBI has spent a lot of time being more specific with the different types of emotionally disturbed people or psychiatrically troubled people.

The CHAIRMAN. Is there a general reason why most hostage takers do not come out?

Mr. BOLZ. Well, let's take, for example, the professional criminal. Many of them are actually afraid. When they finally do come out and I ask them, well, why didn't you come out sooner, they really believed that when they came out that door, they were going to be killed because they have seen it in the newspapers, they have seen

it in the movies. And they project themselves into the movies, and they think when they come out that they will probably be killed anyway. And so one of the things we have always had to do was to indicate to them, hey, nobody is going to hurt you. We are out here, the media is out here, nobody would harm you in front of the media. So we will use the media as a neutral person, actually as a watchdog for us, at least telling him that they are the watchdog for us so that you would not get hurt. So many times they will hesitate to come out.

The emotionally disturbed persons or the inadequate personalities, in that category, they don't want to come out because they want to keep the party going. They want to keep the show going. They are enjoying their notoriety. They are enjoying their 15 minutes of fame, which in this case they stretched out for 50-some days. But they want that notoriety. They want to keep it going.

The CHAIRMAN. In some ways, that is a form of emotional disturbance right there.

Mr. BOLZ. Yes.

The CHAIRMAN. Is there a major difference between hostage-takers who don't want to come out and a situation where the people themselves, the hostages, don't want to come out?

Mr. BOLZ. Well, we have had a situation where, one specific case, the perpetrator was inside talking to a radio station, and he was having a great time. This was an emotionally disturbed person, if you will. It was a bank robbery, but he never asked for any money. He used that bank robbery as his stage to get attention because he was the youngest of three siblings who never got attention from his family. And so he was going to get attention, and he set up this bank robbery. But, in essence, he wasn't really robbing the bank. He just went in there to use this as his stage. And at one point in time, we had said to him, as one of the negotiating points, that we would give him a press conference, that we would let him talk to the media when he came out, and if he came out at 8:30, that the media would be there, and he would make the 10 o'clock and he would make the 11 o'clock.

Well, at 8:30 he was still talking to a disc jockey on the radio, and he said to all of the hostages, listen, you guys can go, it's OK, I'm having a good time talking on the radio, you guys can go. And they said, That's OK, cat, we'll wait for you. And they waited from 8:30 until a quarter of 12 when he finally put down the gun and surrendered. But they stayed with him. And it is not uncommon for people to experience what we have termed the Stockholm syndrome. The Stockholm syndrome refers to a person who is in crisis, wants to share that crisis with another human being, even if it is the bad guy. He will share that crisis with him.

The CHAIRMAN. I guess they are afraid of being shot, too.

Mr. BOLZ. There is always that possibility, that they are afraid as they do leave the place that he might harm them.

The CHAIRMAN. You mentioned in negotiations that time plays a significant role.

Mr. BOLZ. Yes.

The CHAIRMAN. Can you just kind of elaborate on that just a bit?

Mr. BOLZ. Well, the application of time, you know, we lock them into the smallest area, what we call the smallest area practicable,

that is to keep them from roaming all over the place so that our assets there will be able to control the particular situation. And the application of time permits them to get their message across, No. 1, if that is what they want to do. It also permits them to get tired, permits law enforcement to gather their equipment and manpower and keep refining intelligence.

Intelligence is not a static thing. It is something that goes on and on. What was appropriate today and what was important today may change tomorrow. We may find out that what we thought was real yesterday has, in fact, changed. So intelligence keeps changing, and time permits us to refine that intelligence.

The CHAIRMAN. Thank you, Mr. Bolz.

Mr. Lanning, you are the expert at the FBI on cults and on childhood victimization. Do you have any reason why, other than the two phone calls you mentioned, you were not consulted with regard to the Waco incident since there were so many children involved?

Mr. LANNING. I don't know why I wasn't called.

The CHAIRMAN. Has anybody ever given you an explanation?

Mr. LANNING. No one has ever given me an explanation. I knew that agents down there were aware of my expertise. Witness the call from one of the agents down there. And certainly everybody—you know, many people within the FBI were aware of my knowledge and expertise. I only can assume if somebody thought that that knowledge was needed, they would call upon me.

The CHAIRMAN. OK. Tell us how one determines whether a group is a cult, and once that determination is made, should that group be handled differently?

Mr. LANNING. I am not so sure how you determine that. I am not even sure that you should determine it. The problem is the term is a very emotional, judgmental kind of term. There are some people that feel that it is almost the equivalent of a racial or ethnic slur, that as soon as you communicate, let's say, to law enforcement officers that you are negotiating with a cult, it implies a certain negative aspect to it. But certainly some people—I am not saying that you should never use the word. I think maybe there is a middle ground in all of this. But you need to evaluate, maybe to use a similar term or a pseudotype term, cult-like qualities. Does the group have some kind of a political or religious belief system that binds them together? You know, there are certain mechanisms present.

So I think you need to look at those kinds of motivations and bonding issues that bring the group of people together. I certainly think you need to look at the group dynamics of whatever organization of people you are dealing with. But whether law enforcement ever actually has to put the label "cult" on them, I don't think that is really necessary. You need to identify that they may have certain traits and qualities that you need to be aware of, but whether or not you call them a cult or not a cult is a difficult kind of decision, and I am not sure it does not create more problems than it solves.

The CHAIRMAN. So you are more concerned with whether the conduct is aberrational and whether it is going to affect the safety—

Mr. LANNING. Right. The first thing I am concerned about is: Is this organization involved in criminal activity? That is the first and most important thing. And then, second, does it have certain group

dynamics that are going to be very important to your approach? Whether it is the tactical approach or the negotiation approach or the investigative approach, are there certain group dynamics that you need to understand in order to do a good job in any of those areas?

The CHAIRMAN. Well, explain to us how these situations should be handled if children are involved, and you can use the Waco incident as an illustration if you would like to.

Mr. LANNING. Well, I think that I certainly want to make it clear that I am not suggesting that I have any magical solutions to something as complex as what happened in Waco, TX. As I said in my statement, I am not so sure that if I was down there I would have made any difference whatsoever. It is difficult.

One of the messages that I would have brought, and I think that the agent down there knew it already without me telling it because of their experience as well, is that I have just learned that when you have allegations of child abuse and overlaid on that you have this cult atmosphere, you have to be very careful about assessing and evaluating your information. You have to constantly and continuously keep assessing and evaluating whatever intelligence you are getting. You need to challenge—when I say challenge, I am not talking about a confrontation, but you need to keep asking, Where am I getting this information from? Do these people have any biases?

Quite often, for example, groups like this, a lot of information comes from what is called ex-members, former members, and the problem with that is many of those people are somewhat disgruntled. I sometimes explain to law enforcement or FBI agents: What if I asked you what is the FBI like and the only people you talk to are people who quit the organization in disgust? You are going to get a certain view about that organization.

So you have to be very careful. Certainly you want to talk to and listen to former members of the group, but you have to assess and evaluate their information from the context of understanding where you are coming from. So you have to be very careful. But at some point, you make your assessment and evaluation, and if you believe that the children are being abused and to what extent that abuse is going on, that has to then be factored into what Mr. Bolz was talking about earlier. Does this mean that you are going to continue to negotiate, or are you going to try to consider some of the tactical approaches and so on? Is abusing a child on the same level as a hostage-taker starting to kill his hostages? Is it short of that? And so there are difficult decisions that you make. No. 1, are the children being abused? No. 2, how is that abuse going to factor into your decisionmaking about what you are going to do about this situation? And if you don't have a lot of options, there may be little that you can do about it. You have to decide what you can do and how long it can go on.

The CHAIRMAN. Well, thank you, Mr. Lanning.

Mr. Bolz, just on that particular score, should time play a role in changing from the negotiation phase, which you seem to prefer using, and have successfully used in so many illustrations over that 10-year period, to using a tactical phase?

Mr. BOLZ. Well, the tactical phase must always be in place. We would like to say—and we have good cooperation between the negotiators and the tactical people in the NYPD. There has always been that kind of competitive edge, but it is on a friendly basis. I can talk him out or I can take him out, that sort of thing. But basically they have the capabilities if it is necessary in order to save the life of someone inside. And as Mr. Lanning just indicated, if the abuse is such that it is not life-threatening, the use of going in on a rescue, an assault to rescue or dynamic entry, as it were, to rescue these people, the RAND Corp. had done a study going way back when we first started this program, and of 1,000 hostages that were killed in various incidents, 780 hostages were killed during the rescue attempt. So going in on a rescue is extremely dangerous. It is dangerous for the hostages. It is dangerous for law enforcement people going in.

Go back to Attica in 1971, which is a very long time ago, and in that particular case 11 hostages were killed when the law enforcement people came in to try to rescue them. They were killed with firearms. The inmates who were holding them hostage had no firearms. So a prudent man would have to realize it was the would-be rescuers coming in that actually killed the hostages that were in there.

Bringing it to more contemporary times, the Egyptian airline hijacked in Malta, Palestinians had killed two people. When the Egyptian commandos went in to make the rescue, 56 other people died during that rescue attempt, many from smoke inhalation from the flash-bangs that were used. So though the rescue capabilities must be in place, your tactical people must be right on line in the event they start rolling out bodies, we must also remember that going in on a rescue attempt is extremely dangerous. So as Mr. Lanning pointed out, that child abuse must be abuse which is life-threatening. I believe that is what you meant. I don't want to put words in your mouth.

Mr. LANNING. No, I am just saying I think it is a difficult dilemma for a decisionmaker. I certainly agree that if the abuse is life-threatening, leaning toward the idea of making some immediate tactical solution is a little bit easier. On the other hand, if somebody is sexually or physically abusing children and it is not life-threatening, do you just ignore that? I mean, how long do you ignore it? How do you factor that in? So I think that when it is not life-threatening, it makes the decisionmaking a little bit harder, and it makes the judgment call a little bit more difficult.

The CHAIRMAN. Well, of course, it may be life-threatening in the sense that their life won't be worth living.

Mr. LANNING. Yes, how do you measure the psychological aspect.

The CHAIRMAN. Yes, so these are very tough decisions. I think what you are bringing out here, these are tough decisions.

Mr. LANNING. Absolutely.

The CHAIRMAN. There is nothing easy about them, and we can sit back and second-guess law enforcement all we want to, but sometimes law enforcement has to act.

Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Bolz, have you published or written anything in regard to Waco?

Mr. BOLZ. Yes. I responded to an article that was in the American Hostage Negotiators, an article calling Waco a barricade situation. And my response to that was that Waco was not a barricade situation, that Waco was a hostage situation. And a lot of people seemed to question that because they tell you, hey, this is Branch Davidians. That is all they had in there were Branch Davidians. But anytime you have children that are included in that particular situation, these children are not decisionmakers in their own lives. These are the people in there who are holding them, if you will.

That situation in Waco or an incident that took place with the MOVE people on Osage Street going back in the 1980's in Philadelphia, or if you have some guy hanging his child out the window dangling him, holding him by the feet, each one of those incidents are hostage situations. And I believe that David Koresh actually utilized those children in this highbred hostage situation, if you will. He knew what he was doing.

Senator DEWINE. So if you define it as a hostage situation, obviously that changes the way you approach the situation.

Mr. BOLZ. Yes, sir.

Senator DEWINE. In that definition, in and of itself, you change how the officials actually deal with this.

Mr. BOLZ. I believe so, yes.

Senator DEWINE. And that basically was the thrust. Was this an article you published or a letter?

Mr. BOLZ. Yes, it was an article I published in response to an article that appeared in the Hostage Negotiators of America.

Senator DEWINE. And the article was in the same publication?

Mr. BOLZ. Yes.

Senator DEWINE. You brought up something in your testimony that was also brought up yesterday, and I want to make sure I don't summarize it incorrectly. But it seems to me, at least as I understand it, to make a great deal of sense, and that is that you said the optimum situation in a hostage negotiation is to have the command officer independent of the tactical officer and independent of the negotiators. And I wonder, first, if that was my understanding; and if it was, could you again tell us why is that imperative? Why is that important? And if you don't do that, what happens?

Mr. BOLZ. Well, each of the specialties, the negotiators, as I just alluded to, we feel we can talk them out, and the tactical people have been training and honing their expertise to be able to utilize the various tactical capabilities that they have. And basically these should be tools, negotiating and tactical people should be tools for the incident commander to use to accomplish what he wants to accomplish, that being bringing out the people in there and saving the lives, whether it be the hostage or whether it be his own law enforcement people, and even the perpetrators.

Senator DEWINE. How detailed is the protocol that a police department, say such as the New York Police Department or the L.A. Police Department or a major department, would have in regard to hostage negotiations?

Mr. BOLZ. I can't talk about the LAPD too much.

Senator DEWINE. I am just thinking about big departments.

Mr. BOLZ. Large departments, we generally have what we call guidelines, and one of the things when we talk about guidelines for police agencies, we don't want it so specific that you can't go to step four unless you have accomplished one, two, and three. Guidelines should lead you in a general direction.

However, there should be a definite order of command. That should be laid out, who the commanding officer is and who responds to him and what their responsibilities are and what he can delegate. That is where that should be specific.

Senator DEWINE. But I assume, though, that just as you have rules in regard to the use of deadly force any time, that protocol or whatever term you would want to use would also include how you escalate it or certain basic principles that that command officer is operating from. I mean, you mentioned principle No. 1 being saving human lives.

Mr. BOLZ. Right.

Senator DEWINE. I assume that a protocol of a major police department would have that in there.

Mr. BOLZ. Yes. That would be—

Senator DEWINE. You have to know what your objective is.

Mr. BOLZ. That should be the policy. That should be your policy. All of your procedures should reinforce that police, which is life is the most important thing. Be it a large department or a small department, the principle should be the same.

Senator DEWINE. Mr. Lanning, tell me about the Behavioral Science Unit at the FBI. How big is it?

Mr. LANNING. What seems like a very simple and easy question is actually not so easy because many people still, both inside and outside the FBI, refer to the Behavioral Science Unit in almost a generic sense. They are talking about behavioral science-type agents who are Quantico. Actually, the unit has divided into almost three or four different units.

The original Behavioral Science Unit was one unit with about 10 agents in it. In 1984 or 1985, it grew significantly and then was divided into two units. One was called the Investigative Support Unit. The other one was called the Behavioral Science Services Unit. So that was the first division.

Recently, there has been another division that I think will be talked about more this afternoon where the Investigative Support Unit was divided again between the Investigative Support Unit and the Child Abduction and Serial Killer Unit. So right now, the Behavioral Science Unit in the narrowest sense has about eight or nine agents and is part of the Training Division.

Senator DEWINE. How many? I am sorry.

Mr. LANNING. About eight or nine agents.

Senator DEWINE. Eight or nine?

Mr. LANNING. Agents. I want you to understand that is the narrowly defined unit that has the name behavioral science on it. However, most people, when they are talking about the Behavioral Science Unit, are including these others units, including the Investigative Support Unit. All the behavioral science-type units at Quantico, there is probably somewhere in the neighborhood of 30-some-odd agents with a variety of different support people and experts and professionals of varying kinds.

Senator DEWINE. So in Ohio, when we were involved in our situation at the Lucasville Prison and we had support from the FBI, we had people who we call profilers——

Mr. LANNING. Right.

Senator DEWINE. I don't know what you call them. We also had negotiation experts who came in to assist us.

Mr. LANNING. Right.

Senator DEWINE. And as I said yesterday, we thought they did a very, very good job. Would those individuals have been drawn from this unit you are talking about?

Mr. LANNING. Some of them could have been. They would have most likely come from the Investigative Support Unit, some of the profiling-type people. Some of them could have come from the local field office. We have trained some of our agents out in the field offices. Some of them could have come from Quantico, the Investigative Support Unit. Also, some of the hostage negotiators from Quantico, that is a unit that broke away from the Behavioral Science Unit in the late 1970's and early 1980's and was originally called SOARS, Special Operations and Research Unit, now called Critical Incident Response Group.

So these are units that have a behavioral science component to them, and they have grown out of the Behavioral Science Unit. So sometimes the word is used in a very broad generic sense, sometimes a very narrow sense, and that can sometimes be confusing to people.

Senator DEWINE. One of the points that you made was almost restating the obvious, but sometimes that is very important; that is, you need to have as many facts as you can about the people who you are dealing with.

Mr. LANNING. Yes, and certainly I agree with everything that Mr. Bolz said about that. The point I was trying to make, that is crucial in every case.

Senator DEWINE. Right.

Mr. LANNING. But it has been my observation and experience that when you start to talk about cults and you overlay this religious component, that problem becomes more difficult because most police officers have their own religious views and beliefs, and it becomes maybe sometimes harder to maintain the objectivity of the investigators. So certainly I think that is an important concept. The point I was trying to make is that it is a more difficult concept when this issue of cults and religion enters the case.

Senator DEWINE. Specifically in regard to Waco, we were dealing with, if you want to use the term, the Branch Davidians. How important would it be to know and understand what they believe, in other words, the specific facts? I am trying to go from the generic or the general expertise in cults to what is relevant—you know, how much of the general is relevant, and how much is the specific relevant? And which is the more important?

Mr. LANNING. I think you hit the nail right on the head. First, you need to have some general knowledge of cult-like groups and group dynamics. But you also need to, as quickly as possible, begin to gather up as much specific intelligence as you can about this specific group. And then it becomes more complicated, because it would be a terrible mistake to think that everybody who is a mem-

ber of this group is some kind of a robot who is exactly the same. You then have to divide up and assess and evaluate the beliefs and religions leanings of each individual member of the group. Our agents and negotiators are knowledgeable about those kinds of things, and we look at those kinds of dynamics. You can't assume that every member of the group is exactly the same, so you then have to get down to even more specific intelligence.

I think this is an important thing to realize. To the best of my knowledge, the Branch Davidians were living in that area for over 50 years as a possibly cult-like group with minimal involvement with law enforcement. It is when they get involved in violations and breaking the law that law enforcement then enters the case.

Senator DEWINE. If I could just have 30 more seconds, Mr. Chairman?

The CHAIRMAN. Sure. Go ahead.

Senator DEWINE. Ultimately, then, particularly in this case, it comes down to one person. You are building up to—in the case of Koresh, you have to know the whole set of facts, but then you are going to have to at some point focus on him.

This may be an unfair question to you, but it is a question that is hanging out here, and I am just going to go ahead and ask it. You can tell me you don't want to answer it and that is fine. Your appearance here today and the fact that you were asked by the committee to be here and your testimony raises the question, an obvious question, as to whether or not the FBI overlooked a major asset:—you. I guess what I am trying to struggle with here—and in later questioning with other witnesses, we will get into this as well—is whether that is true or not. Whether or not you had something that was absolutely unique that could have been brought to this particular situation that was overlooked.

Mr. LANNING. It is hard for me to say. One problem—

Senator DEWINE. That is pretty unfair for me to ask it of you.

Mr. LANNING. Some of middle-class modesty, I mean, you know, I was not raised to kind of blow your own horn, so I have some difficulties in that area. But maybe, to be more direct, I know from experience—I also was trained to be a hostage negotiator many years ago and listened to lectures by Mr. Bolz, and I know the training and experience of our hostage negotiators, and I know that they have written and researched and had a lot of experience dealing with people who have a cause, have a religious belief system. So it is my opinion that our hostage negotiators down there did understand what a religious commitment was and did understand about some of the fine points of dealing with those kinds of people. And I am not so sure that I could have come down there and suddenly had some wisdom that nobody else there possessed. I don't think that is true.

Senator DEWINE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator DeWine.

I apologize to Senator Simon. I should have called on him first. I didn't see him there. Senator Simon, we will call on you now.

Senator SIMON. It was a major oversight, Mr. Chairman. [Laughter.]

The CHAIRMAN. He thought it was intentional. But it wasn't.

Senator SIMON. I thank both of the witnesses, not only for your testimony but for all you have done.

I guess a very fundamental question, Mr. Bolz, as you look at the FBI, is there a structural deficiency here?

Mr. BOLZ. I don't think I would say there is a structural deficiency. I think perhaps what may have happened in a situation like, for example, in Waco where the negotiators were spread apart a great distance from the tactical people, and that line of communication was very, very far away. And it didn't give the opportunity for rubbing elbows between the negotiators and the tactical people so that they would be able to communicate some nuances.

One of the things that was very significant and important in the NYPD was that our tactical people and our negotiators would train together at the range, so we would know each other on a first-name basis. We would know each other's nuances.

Just as an aside, one cop would say to me, Go ahead, Bolz, you'd give me up for a six-pack, you know. But this is the kind of interaction that we had, and I think in Waco, the distances between the negotiators and the tactical people worked to a detriment.

Second, I don't know that the FBI's HRT team and the negotiators really trained together, because the HRT had done a tremendous amount of training, some of it quasi-military, to deal with terrorists, in other words, many of them outside of the United States, and so that is where there may have been some breakdown in the communication.

Senator SIMON. You mentioned Attica.

Mr. BOLZ. Yes, sir.

Senator SIMON. And it has been some time. I read Tom Wicker's book, I remember, on Attica. Is a prison situation very different in terms of hostages, or do the same principles apply in a prison situation?

Mr. BOLZ. The same basic principles extrapolate into a prison situation as well. However, from a tactical standpoint, in a prison situation, as far as response is concerned, if our intelligence would indicate that this was a spontaneous situation, that this was not a planned situation, then you would have what we call a window of opportunity for the immediate show of force to bring down the least adequate of a group of inadequate personalities.

However, after that 15-minute or 20-minute window of opportunity, this loose, unstructured group will take upon a structure. You will actually almost hear it take place: you are in charge of hostages; you are in charge of prisoners; you are in charge of weapons; you are in charge of weapons. Then were you to apply force, you would only solidify the people inside.

Or if your intelligence would indicate that this was a planned situation—and that intelligence could come, for example, stockpiling food or putting aside paper bags so that they would put them over their heads to give them anonymity when these things go down—then there would be a difference. In that kind of a situation, you would not apply force at all. You would lock them into the smallest area practicable and apply time and then contain and negotiate.

Senator SIMON. I thank you. I thank both of you for your contribution.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman.

Mr. Bolz, you mentioned in your opening statement that the guidelines for negotiating that you first developed grew out of the situation of the Munich Olympics.

Mr. BOLZ. Yes.

Senator GRASSLEY. Last week at the Ruby Ridge hearing, the FBI Director said that out of the Munich Olympics situation, the FBI created the Hostage Rescue Team. I am going to refer to that as HRT. As you know, that is the quasi-military unit which, because it was not managed properly, led to tragedies at Waco and Ruby Ridge.

I found it interesting that the same incident, the Munich Olympics, led to the opposite extraordinary responses: on the one hand, a proven and successful negotiating strategy, and on the other hand, a well-trained high-tech super tactical unit.

I would like to have you comment on that.

Mr. BOLZ. Well, I think the HRT really came about—it was probably some time in the late 1970's that it came about. It didn't come about directly after Munich, but the principles of negotiating and, of course, with negotiating you do need your tactical support.

Negotiators have been called the velvet glove over the iron fist, which is what has to be, because the perpetrator has to know that if he doesn't talk to the negotiator, the option for force is there in terms of the tactical people. And so it has to be a team effort and a team operation.

The HRT specifically as a unit I think came a little bit later on, but local FBI offices did have negotiators and SWAT people in these various offices that would respond. The HRT, I think, was a little more toward the international terrorist idea, whether the international terrorist coming here or if we had to go out and rescue our citizens in some foreign land when we get invited in there by that foreign government to go in and make that rescue.

Mr. LANNING. I would like to add, I haven't seen the Director's testimony, but the FBI established hostage negotiation, negotiators, at about the same time with the assistance of people like Mr. Bolz. After the Munich incident, we developed our hostage negotiation training package. HRT did not come into existence—and somebody can probably give you the exact date—until the late 1980's.

Senator GRASSLEY. Late 1980's?

Mr. LANNING. The Hostage Rescue Team, yes. The formalized group at Quantico.

Mr. BOLZ. Well, I think it had to be before, because I trained them when I was still on the job, and I was on the job until 1982. So it had to be—

Senator GRASSLEY. 1982–83 would probably be more—

Mr. LANNING. We had SWAT teams prior to that, but I don't think—the Hostage Rescue Team, I think, came later. But somebody can give you the exact date, I am sure.

Senator GRASSLEY. Mr. Bolz, you mentioned that the incident commander should be a patrol officer, not either a negotiator or tactical command.

Mr. BOLZ. Patrol command officer, right.

Senator GRASSLEY. Yes. The FBI is making some structural changes to do something similar. Now, I have a concern; that is, those who will be newly trained to be incident commanders for the FBI have a tactical background, and so they come up through the ranks from that sort of culture.

Is this a problem? In other words, will the culture negate the training? And in any case, what must we be on the lookout for to make sure that the tactical culture doesn't unduly influence on-the-scene crisis management decisionmaking?

Mr. BOLZ. Well, I think that is an individual thing. For example, the head of our hostage negotiating team now in New York City, Hugh McGowan, he is a former emergency service tactical man who is now the head of the negotiators. And so the transition can be made. There will be individuals who may have a leaning one or the other, but the idea is that you are now part of the administrative part of this operation, and you are going to take staff advice from the tactical people and staff advice from the negotiators. Individuals who have a certain bias or a certain leaning, I don't know that you could ever really clear that up. The person will be promoted for his administrative capabilities, and he should not be punished just because he came from HRT. He should not be punished just because—

Senator GRASSLEY. It may be difficult to do, but do you see it as a problem?

Mr. BOLZ. No. We have been able to overcome it. There may be individual people who may have problems overcoming it. You will always have people whom people refer to as "cowboys."

Senator GRASSLEY. The FBI claims that their objective at Waco was to have the Branch Davidians come out of the compound so that there wouldn't be any further bloodshed. Yesterday, my staff interviewed one of the Branch Davidians at the district jail, and he is going to testify later today. He said that the playing of loud music, the flash-bangs, the conflicting signals the occupants were getting from the FBI made it so that they didn't really want to come outside; they wanted to stay inside.

Does that surprise you?

Mr. BOLZ. No, not at all. Anytime you have conflict, if the negotiators are saying one thing—and, of course, they were doing this by telephone in talking to the people inside—and the tactical people on the outside were doing things which were contrary to what the negotiators wanted, this creates a problem and creates a problem of credibility with the negotiator. How can they deal with that negotiator and trust him if things that he is saying are not carried out and things totally contrary to what he is saying are carried out? It creates a problem.

Senator GRASSLEY. Mr. Bolz, you stated that the tear gas would not be used if children were involved. Why, then, did the FBI use CS gas at Waco?

Mr. BOLZ. I wish I knew. I think that somewhere along the line—and this I had heard; I can't specifically put it down—a consultant to the FBI, a medical consultant, said, A, the masks that they had, that the Branch Davidians had, would only be effective

for about 2 hours and after that they would be no longer effective; B, that the gas would not harm the children.

Well, we know that chemical agents are supposed to be less than lethal. We also know that chemical agents can kill. If people ingest too much chemical agent physically than their body medically can withstand, if they coat the alveoli sacs inside of the lungs and inhibit the exchange of oxygen and carbon dioxide into the blood, people get what is known as chemical pneumonia. Moisture forms in the lungs, and they die.

On chemical agents, there is what is known as the mean lethal dose. In a specific cubic area, if you put in more chemical agent above this dosage for that area, you could kill those people.

I have done research after this to try to find out if any of the gas mask manufacturers in the United States make gas masks for children. The only gas mask—I have 28 years at NYPD and another 12 years training law enforcement people. The only children's gas masks I have ever seen were in Desert Storm in Israel and before that Mrs. Minniver in London in World War II. Other than that, I have never seen a children's gas mask.

And, so, I think Koresh knew that these children were his ace in the hole, and that is why he kept them there. Unfortunately, some people didn't realize that that is what it was.

Senator GRASSLEY. Mr. Lanning, yesterday we heard criticism of the way the FBI failed to consult with the kind of behaviorists that had the best information on the Branch Davidians. Is this recognized by the FBI? And have there been changes so that the FBI will get the best information available?

Mr. LANNING. Yes. One of the things that I was asked to participate in as a followup after the incident was over, is to try in a more formal way identify various scholars and academics and other experts in different areas. One of the problems that has presented that I was talking to Senator Hatch earlier about is: Do we get an expert on the Branch Davidians or do we get an expert on religious groups or experts on end-of-the-world cults?

I mean, you try to identify some generalists that you can go to first, and hopefully they can help you then find the specific people that you may need for a specific organization that you may be dealing with. But, yes, we have done that and have tried to identify in a more formal way the experts.

Senator GRASSLEY. Mr. Chairman, my time is just about up. I would like to make just a little bit of comment about the noticeable absence from this hearing of the FBI Director. That makes me very disappointed in the fact he chose not to attend. It seems to me that the Director does not feel that there is sufficient question about the public's confidence in his agency, and this goes to a point that I made a few weeks ago at the Ruby Ridge hearing, that people in Washington still don't understand the feeling out at the grassroots about the crisis in confidence in Federal law enforcement.

Also, Mr. Chairman, I want to put in the record—

The CHAIRMAN. Could I just add one thing to that? It might clarify the record. I know that it is disappointing to you, but it is probably my fault because I chatted with the Director, who was willing to come if I really wanted him to come. But he is in the middle of an awful lot of things, and he felt that Mr. Esposito would be able

to answer the questions even more definitively, which is what we are trying to do at this hearing. So it isn't a question of whether he would come or not. He was willing to come. I made the decision to go ahead with the tough experts down at the FBI.

I might add that he was not Director at the time that this occurred, so I would much rather have somebody who can answer all of our questions and speak for the Director as well, which Mr. Esposito will be able to do.

Senator GRASSLEY. Well, you know, I think that—

The CHAIRMAN. Maybe I made a mistake here, but I will take the blame for it.

Senator GRASSLEY. OK. Well, if you made a mistake, then, it would be in relationship to whether or not Freeh could answer the questions or whether Mr. Lanning or anybody else can answer questions for the agency. It seems to me that when we have a time of crisis, that is when we need leadership, and the best evidence of that leadership is the presence, and the presence in the middle of controversy, trying to explain it, because it seems to me it is going to take leaders and not somebody under the leaders to restore the confidence. And, of course, that is my point.

The CHAIRMAN. Well, I think it is a good point, and maybe I made a mistake here. But Mr. Esposito is an expert. He will speak for the Director and the whole FBI, and he is the Assistant Director. So I made that decision myself, and I apologize to my colleague because I think your point is well taken.

Senator GRASSLEY. Yes. Then the last point I would make, I do not have a question, but I want to put something in the record and just say a little something about it.

In the course of preparing for these hearings way back in July, our staffs interviewed a gentleman by the name of Karl Seger who owns a consulting business and teaches law enforcement agencies the proper techniques for negotiating. And his techniques were borrowed heavily, I believe, from Mr. Bolz.

Mr. Seger prepared for us a chronology taken from various newspapers of the conduct of the negotiations between the FBI and David Koresh. This chronology illustrates some of the major weaknesses of the strategy employed by the FBI negotiators. It is clear that this strategy would never have been employed, I believe, by a student of Mr. Bolz's or somebody of that professional background, and I want to enter into the record to inform the public and our colleagues on the way not to conduct negotiation.

Thank you, Mr. Chairman.

[The information of Mr. Seger follows:]

This Chronology was prepared for the Senate Judiciary Committee by Karl Seger, President of Associated Corporate Consultants, Inc. Dr. Seger prepared the chronology from open sources to illustrate the weaknesses in the negotiation strategy employed by the FBI at Waco.

DAVID KORESH FILE

022893 Hous P First shots fired at 9:55 am when 100 ATF agents storm out of cattle cars and storm the compound for 45 minute gun battle. Koresh speaks with KRLD radio and tells them ATF shot first. And that he is wounded. Koresh releases two children.

030193 Hous P Koresh speaks with KRLD again at 1:50 a.m. say shooting was unnecessary. Later in day ATF spokeswoman Sharon Wheeler says ATF was

outgunned in its raid. Captured Davidian Delroy Nash is charged with attempted murder of a federal agent. Ten more children are released.

030193 Knox N-S Initial raid at compound. Four ATF agents dead, 16 wounded during 45 minute shootout. ATF took KWTX-TV reporter, John McLemore, with them during the raid. ATF knew cult compound was heavily armed (reason for the raid) and that children were living there. Two helicopters were hit during the shootout. The fact that there was a large arsenal of weapons was stated in a story on Sat. (the day before the raid) in the Waco Tribune-Herald. Koresh had been charged with attempted murder in 1987 after a shootout with rival cult members.

030193 Wash T Four feds killed, 14 hurt in shootout. 100 law enforcement officers in initial assault. Ted Royster ATF SAC said the investigation of the cult had been going on for seven months. Koresh claims he was shot during interview with CNN. National Guard helicopters used in raid (3). ATF was negotiating with Koresh. According to Royster, "Due to the fanatical bent of the Branch Davidians—who think that the world will soon come to an end soon, that 'Mr. Howell' is the true Jesus Christ—those still inside might do something rash to emphasize their beliefs." At 9 pm ATF let Koresh read a statement on a local radio station. He quoted Rev. re the book of seven seals (quote in article).

030293 Hous P Two elderly women and six children are released. KRLD goes on air at 1 p.m. to say Koresh has agreed to surrender if station plays an hour-long statement he has made. 58 minute sermon preaches his version of the end of the world but he does not surrender.

030293 Wash T Cult released 10 children. Koresh said he was dying and talked about "the book of seals" ATF still responsible for negotiation. Waco radio reported received telephone call from someone inside compound. FBI HRT sent to scene with Bradley fighting vehicles. Koresh was able to telephone his mother after shootout. "There is no reason why the ATF would have been surprised at the types and kinds of weapons if there intelligence data was good," one federal official said. "If they had people inside, they should have known what to expect and have planned accordingly."

030293 Knox N-S Released 10 children. FBI HRT sent to scene. Notes that cult members believe Koresh is the Lamb mentioned in the Book of Revelations. ATF spokesperson said the problem they had is that they were outgunned.

030293 Tennes Federal agents practiced for days for raid. ATF still talking, said group had bigger guns than ATF did.

030393 Hous P With a straight face, FBI agent Jeff Jamar explains, "He (Koresh) refused to honor his promise and has indicated he will keep his promise to come out when he received further instructions from God." Office trailers are brought to compound for use by Feds. Boy leave with a box of puppies. *Ask how he hears God.

030393 Knox N-S At least 18 children and two adults have been released. FBI authorized release of 58 minute videotape made by Koresh to be placed on local TV. ATF abruptly cancelled news conference with statement saying the standoff wasn't over.

030393 Wash T Koresh compares himself to Christ. FBI now in charge of negotiations.

030493 Hous P Another child leaves compound and Bradley armored vehicle retrieves a cult member's body 350 yards behind cult building.

030493 Knox N-S Koresh did not give up as promised on previous day. Waiting for orders from God. In control of FBI. ATF says that cult was waiting for them.

030493 Wash T Koresh said he received a message from God telling him to wait. Jamar said Koresh refused to honor his promise and that he indicated he will keep his promise when he receives further instructions from God.

According to Jamar, "We are not contemplating assaulting the compound at all. We're prepared to do whatever it takes and stay here as long as it takes to settle this matter without any further bloodshed." 18 children and 2 elderly women released.

ATF spokesperson Harnett confirmed that Koresh was tipped off about the raid and that it failed because they lost the element of surprise.

030593 Hous P 21st child leaves compound. Koresh denies that he sees himself as Jesus Christ or that he plans to commit suicide. He says he is a prophet. FBI sends medical supplies into the compound.

030593 Knox N-S 2 more children allowed to leave. One cult member told the Waco Tribune-Herald that Koresh may be planning to die on Friday. Have not yet cut off electricity to compound.

FBI announces they are going to wage "psychological war" against the cult. "Everything (Koresh) is used to, they'll disrupt it." it quoted a federal agent as saying (Houston Chronicle). The agent told the newspaper electricity and telephone would

be cut off, a ham radio tower would be knocked down, loud disruptive music would be played and powerful lights would be turned on the compound at night.

030593 Wash T Law enforcement personnel report they are preparing for a long negotiation and that biblical experts are being brought in to discuss Scriptures with Koresh.

"The budgetary concerns will not affect our judgement whatsoever," said Dan Conroy, the ATF spokesman. "Money is not an issue as to how long the negotiations go on with the heavily armed cult members."

"Negotiations are not a bargaining and not a bartering," Mr. Jamar said. "They've agreed together that the children should come out. It's a tedious process."

Agents said their negotiators have been in near-constant touch with Koresh and they are hopeful that more children will come out soon.

030693 Hous P Koresh may not be letting others leave the compound. Speakers set up and rock music targeted at compound.

030693 Knox N-S State Department told ATF they have info from Australia that Branch Davidians were getting ready to commit suicide and that's why they assaulted the compound. As a result they made the decision to do an assault rather than surround the compound. On Friday, however, Koresh told negotiators he had no intention of committing suicide.

"He has denied intent to commit suicide," FBI Agent Bob Ricks said.

Koresh freed the 21st child and told authorities there are 47 men, 43 women and 17 children still in the compound.

"This entire matter would be brought to a quick conclusion if Mr. Koresh would leave the compound," Rick's said. "We believe it is totally within his power to direct others in that compound to walk out."

Although Christ is believed to have died on a Friday, Koresh has compared himself with Christ in the past. Ricks said that the cult leader resents the comparison. "He describes himself as a prophet," Ricks said.

030693 Wash T ATF had intell from State Department from Australia that Koresh would do the same thing as Jones in Jamestown. So they committed to a high risk attack rather than surrounding the compound and demanding his surrender.

Negotiators are taking credit for the release of the children and saying that Koresh has the power over the adults in the facility. According to Ricks, "And the fact that only two adults have been released so far raises our suspicion to a degree."

Ricks also reports that Koresh justifies the deaths of the ATF officers because he was responding to force with force.

030793 Hous P Negotiators say talks have deteriorated.

030793 Wash T Ricks says he doubts that cult members will ever leave without the approval of Koresh. Ricks announced to the media that if Koresh is listening he wanted to give him and his followers assurance that he and everyone inside the compound would be treated fairly and humanely if they came out.

Koresh told agents he is not Christ—"as he had professed many times in the past"—but just a prophet.

ATF admits that the basis for the initial raid was one warrant for the arrest of Koresh and a search warrant to look for weapons.

FBI says they will meet whatever needs the cult has, food medicine, etc., "The negotiators will meet whatever their needs are. There are still children in there."

030793 Knox N-S Ex-cult members say the cult members are experiencing increased Bible lessons and told to prepare for the apocalypse. Koresh has been telling them for some time that he is the Lamb and will be persecuted and that they will be persecuted too.

According to Ricks, Koresh is known to be monitoring television and radio reports but, "We have no idea how he is handling the information."

It is reported that the compound has its own well and a 40 foot storage tank. Local merchants note the sect is well stocked with military rations and non-perishable goods in underground lockers.

030893 Hous P Koresh draws a line in the prairie declaring, "We are ready for war * * * Let's get it on" For first time, Feds portray Koresh as irrational, provocative, and a liar.

030893 Knox N-S According to FBI Koresh is becoming irritable and has rejected proposals to end the week long standoff. He harangues negotiators in long telephone conversations that range from his childhood to his religious beliefs and has started playing his own music loudly at the compound.

Ricks, "We offered him what we thought was a reasonable compromise with an item that was of concern to him, and the offer included from outside the total release of all the people inside. And that offer was rejected."

Ricks said the Koresh was becoming irritable during negotiations.

(run chart on irritability and demands)

030993 Hous P ATF says they raided compound because they were making, not just purchasing, illegal weapons, according to ATF spokeswoman Franceska Perot.

Cultist hang banner outside window, "God Help Us We Want The Press." Koresh tells feds he has a headache and leave negotiations to other cult members.

030993 Atlanta C According to FBI Koresh may want to provoke another gunfight to fulfill his apocalyptic prophecies, telling negotiators, "we're ready for war," and "Let's get it on."

Ricks reports that negotiators are talking to Koresh and more than 30 of his followers. Koresh claims to have explosives that will blow the Bradleys 40 or 50 feet into the air.

Cult and FBI have agreed to allow cult to conduct a funeral for cult member killed in original assault.

030993 Knox N-S Ricks says Koresh claims he has been prepared for war since 1985 and that some of his followers say they are ready to follow him to their deaths.

According to Ricks, Koresh initially said he was offended that people said he claimed to be Christ and that he is a prophet. "We are now getting the message that it is probably much more than him just being a prophet. He is probably a messiah and he is here to fulfill prophecies."

"It is our belief that he believes his prophecy will be fulfilled if the government engages in an all-out fire fight with him in which he is executed. He has made such statements as 'We are ready for war' 'Let's get it on' 'Your talk is becoming in vain' 'I'm going to give you the opportunity to save yourselves before you get blown away.'"

All the people the FBI has talked to are completely devoted to David and what he is trying to accomplish. To them, it would be going against their belief in the Bible to do otherwise.

030993 Wash T Ricks says that Koresh told negotiators that suicide was a religious philosophy.

Ricks said they were considering a number of contingency plans but that, "We believe any effort to effect a rescue (of cult members) would be counterproductive because we would be playing right into his hands."

"We believe an all-out gun battle would ensue and it would cause us to have to retaliate—and his purpose would be accomplished," Mr. Ricks said. "He believes that his philosophy will be fulfilled if the government engages in an all-out fire fight with him, in which he is executed."

"I think its important for you and the American people to have a better understanding of what we are dealing with." He said the government has tried to downplay the negative side of Koresh's personality in hope that negotiations would remain cordial.

031093 Hous P Cult's released children say they watched war movies, ran military style drills and learned that police were the enemy while preparing for the end of the world.

031093 Knox N-S Ricks says Koresh vacillates between shouting profanity and speaking of peace during negotiations, a sign he's succumbing to duress in the 10 day standoff.

Ricks says Koresh, who says he is Jesus Christ, also appears to indicate some interest in ending the standoff.

In Washington, ATF Director Stephen Higgins told the NBC-TV Today show that federal agents are prepared to wait out Koresh "indefinitely" if necessary.

031193 Hous P Koresh's month, Bonnie Haldeman, says attorney hired on Koresh's behalf, Dick DeGuerin, was turned back from compound. U.S. District Judge Walter Smith, Jr. refused to grant Koresh a lawyer.

031193 Nash N-S S. Higgins defended the ATF assault saying "From what I know, we had an excellent plan."

Cult members hang a banner "Send in CFA and Don Stewart." CFA-Constitution Foundation Association. Don Stewart is someone who is experienced in negotiation who has been interviewed on KGBS-AM in Dallas.

031293 Hous P Kathy Schroeder leaves compound. Oliver Gyarfas, first man to leave also comes out. Attorneys claim feds are keeping negotiations and Koresh's weapons charges hushed up.

031293 Knox N-S Koresh agreed to release three men from the compound. A 12 year old girl who lived at the compound for four years said that while there she was taught how to put a gun in her mouth and instructed how to commit suicide by taking cyanide.

031393 Hous P Federal magistrate orders Schroeder and Gyarfas held without bond as material witnesses.

031393 Knox N-S FBI Agent Dick Swensen said three two adults leave compound. Koresh spoke with negotiators for more than an hour Thursday night, his first session since Tue. Koresh reported that he has a wound to his side but that it is not life threatening.

031493 Hous P Schroeder and Gyarfas telephone cult members inside compound and ask them to come out peacefully. Cult members unfurl new banner, "FBI broke negotiations, we want press." After dark cult uses light to send same message in morse code. FBI lights up compound and says negotiations have fallen off.

031493 Wash T After 10 days of questions, ATF spokesperson Dan Conroy said that an ATF official in Dallas, Sharon Wheeler, had contacted several Dallas-area news agencies just hours before the raid. She called and asked for specific press representatives numbers, "in case something happened in Dallas" over the weekend.

A Dallas lawyer, once an assistant US Attorney in Dallas, said he was surprised there weren't more reporters on hand. He said it was common practice to invite news people, particularly television reporters, to go along on such raids. "It's usually a lay-down, a great communications coup. Especially around budget time."

031593 Hous P DeGuerin urges Koresh to give up. Negotiators say they have avoided biblical discussions with Koresh.

031593 Wash T Georgie Anne Geyer, national syndicated columnist compares David Koresh to Adolf Hitler in his bunker, Jim Jones in Guyana, or Fidel Castro. Final question in article, "So perhaps we ought to ask, when thinking about the future of our nation, not, 'What does David Koresh want?' but, 'What do we want.'"

031593 Wash T Despite the 14-day standoff, it appears to be business as usual inside the compound. Koresh says he will walk out when he gets a message from God.

"This siege that is going on has little effect, I believe, with the daily ongoing activities within the compound." Bob Ricks said yesterday.

031593 Knox N-S FBI strategy is to isolate Koresh and his followers. This the reverse of initial tactic which was to give him access to the media.

031693 Hous P FBI reports Koresh is still in charge in spite of wounds. Schroeder requests a release from federal custody.

031793 Hous P Schroeder says at least 30 cultists are ready to leave.

031793 Wash T McLennan County Sheriff Jack Harwell and an FBI negotiator met for about an hour with Koresh's top lieutenants Steve Schneider and Wayne Martin. Martin is a Harvard educated lawyer. FBI said discussions were over minor items and that the Davidians did not display any sense of wanting to end the situation. Swenson quoted as saying, "They're going to wind up coming out of that place, period! It's not like we're going to go away. * * * How long that takes is somewhat in their hands."

031893 Hous P FBI blares tapes of negotiations over loud speakers to annoy cultists.

031893 Knox N-S According to FBI, nearly half the adults inside the compound say they are ready to leave. But members are waiting to see what happens to two adults who were previously released.

ATF agent, John Risenhoover, who was wounded in initial gunfight blames media for tipping Koresh. Suit filed against Waco Tribune for reckless conduct. Paper's editor denies the charges.

031993 Hous P Brad Branch and Keven Whitecliff leave compound. Authorities deliver magazines and letters from attorneys.

031993 Wash T FBI says Koresh enjoys attention and cannot face the inevitable conclusion, surrender. Bob Ricks said Koresh might want to foster another deadly confrontation in which many of his followers would die to provide justification for his actions and fulfillment of the Scriptures.

FBI began blasting loud messages at compound telling members of status of negotiations and government stance. They are attempting to pressure Koresh by saying he is lying or withholding information from his people.

"We broached with Mr. Koresh that if he's truly the leader of his people, it's time to lead and bring this thing to an end." Bob Ricks also said Koresh is not able to handle a direct confrontation. Ricks continued, "The cult leader shows no fear. Our psychologist tell us that such a person probably relishes this type of situation." He also said the federal authorities felt no urgency to bring things to a head.

031993 Knox N-S FBI said Koresh may be willing to let many of his followers die. (Note: The best predictor of future behavior is past behavior. What happened the last time the Feds confronted the Branch Davidians?) FBI drove three buses onto the compound so adults could leave. But while negotiating with Koresh, he said he had to go to the bathroom and did not return to the phone.

032093 Hous P FBI reports that for water the cultist are relying on rainwater collected in pots and pans.

032093 Wash T Two men left the compound at 8:30 pm. Ricks said Koresh spent a little more time negotiating and appeared to be more willing to end the stalemate. Koresh is talking in terms of days rather than weeks. Ricks said Koresh wasn't able to handle direct confrontation on the telephone yesterday and may be breaking down. FBI delivered package of letters from attorneys who have been retained by cult members to represent them. Package was, "A bridge to get us over this stalemate" and that the government expects something in return, according to Ricks.

032093 Knox N-S Talks with Koresh took a turn for the better. According to Ricks, Koresh asked for a little more time and said he has no intention of committing suicide. He realizes he has a message to get out and that if he is killed it will not get out.

032193 Hous P Seven cultist leave; James Lawter, Gladys Ottman, Sheilla Martin, Annetta Richards, Ofelia Santoyo, Rita Riddle and Victorine Hollingsworth.

032293 Hous P Authorities play record chants of Tibetan monks and complain that Koresh has only let the weakest members of his "militia" leave.

032293 Know N-S At least seven more people left the compound on Sunday. All were adults, more were over 50.

032393 Hous P Livingston Fagan, believed to be a cult recruiter, leaves the compound.

032393 Wash T FBI turns up pressure on cult (Note: Why, after yesterday's releases?) "It's up to them," FBI spokesman Bob Ricks said. "If they back away from what they promise, we will continue to exert the pressure we feel necessary. Pressure includes use of loud speakers, glaring lights and movement of armored vehicles. Ricks said Koresh led them to believe on Saturday that as many as 30 cult members would be coming out. Seven did. Koresh's demeanor seemed improved until the FBI loud speaker onslaught that lasted until 3AM and was focused on trying to get him to come out.

032393 Knox N-S FBI stepped up "sonic assault" by playing Tibetan religious chants until early in the morning. They also played types of negotiations between Koresh and the FBI.

032493 Hous P Koresh breaks off negotiations to celebrate a "highholy day." Louis Alaniz, a religious fanatic from Houston, sneaks into the compound.

032493 Knox N-S Koresh refused FBI offer of national radio broadcast if he ended the standoff. FBI offered him access to the Christian Broadcast Network. Ricks said Koresh dismissed the offer, "Out of hand," and that, "He will probably not be able to get as generous a response from us in the future." The message was carried by another Davidian who left the compound.

032593 Hous P Richards, Ottman Riddle and Lawter are freed to a halfway house.

032693 Hous P Judge Smith rules Schroeder can be released. ATF serves her an arrest warrant for conspiring to try to kill federal agents. Californian who calls himself Jesse Amen sneaks into the compound.

032693 Knox N-S Louis Anthony Alaniz of Houston ran through the FBI's perimeter and into the Davidian compound. FBI did not shoot him because he was unarmed.

032793 Hous P David Troy says ATF asked for Texas National Guard help during initial assault because they believed methamphetamines were being made by the cult.

032793 Knox N-S FBI increases pressure with high-toned of an off-the-hook telephone screeched through loud speakers. They also used Tibetan chants, Christmas carols by Mitch Miller, Reveille and Nancy Sinatra's "These Boots are Made for Walking." According to Ricks, Koresh has expressed a certain irritation to the noise. Ricks also told the press they had discussed playing "Achy Breaky Heart." (Note: Ricks is playing games and expects serious response from a psychopath. Lousy tactic. Where are the adults?)

032893 Hous P After four days of silence, Koresh talks to negotiators. Lawyer DeGuerin talks to him on the telephone.

032893 Knox N-S Several ATF agents say original raid on compound was like the charge of the Light Brigade, laidened with mis-steps, miscalculations and unheeded warnings that could have averted bloodshed. Supervisors knew before the raid that they had lost the element of surprise. ATF claims assault was betrayed by a telephone call at the last minute. Claims included:

1. Helicopters came under fire before assault began.
2. Poor communications, only squad leaders could communicate with each other.
3. Not all agents were briefed on the contingency plans.

4. Request for more powerful weapons was denied.

5. Not all agents were told of the types of weapons at the compound.

6. AFT did not bring medical assistance on the raid. ATF has still not released information on original inducements or charged that "justified" the raid tactic!

032993 Hous P Cult member Riddle who left the compound eight days earlier says that the brethren left behind will die for Koresh if God wants them to. Santoyo is released from jail to a halfway house. DeGuerin talks to Koresh on porch of compound saying the conversation was, "very good."

032929 Rocky Mountain News 31 year old Davidian, Kevin Whitecliff said "Everybody there has a ringside ticket; man; they're not going to leave there for nothing." Other cult members who have left compound say Koresh and the people with him will not leave.

033093 Hous P DeGuerin talks to Koresh inside the compound.

033193 Hous P Hopes for surrender evaporate the DeGuerin emerges from a six-hour talk with Koresh and asks FBI agents to allow doctor into the compound to treat the cult leader. DeGuerin says he believes it will take a while to negotiate a surrender.

033193 Wash Post FBI allows attorney Dick DeGuerin to speak with Koresh on telephone and then meet with cult members for two hours on their front porch. Ricks said this is part of the logical progression of the negotiation and would not have served any purpose previously. He said the attorney is needed to resolve the final hurdles. Two Davidians who left the compound Brad Branch, 44, and Kevin Whitecliff, 31, were charged in US court with conspiracy to murder federal officers. Charge carries a maximum sentence of life without parole (Note: Did it make sense to charge these two at this point in the negotiation?)

040193 Hous P Lawyers DeGuerin and Jack Zimmerman meet with Koresh for eight hours and predict the imminent surrender of cult members.

040293 Hous P No one leaves. At least three lawyers claim to represent Koresh including Melvin Beli who claims Koresh's case ended up on his desk because the cult's satellite dish wiggled.

040393 Hous P Authorities block 50 protesters from hiking into the compound. Feds say they hope Koresh will come out during Passover.

040393 Knox N-S Attorneys Jack Zimmermann and DeGuerin say they expect Koresh to call them to discuss ending the siege. However, there is no deadline. FBI agent Richard Schwein said agents have no plans to renew contact with Koresh. "We will do what we have to do in our time. But we are patient people. . . . We can outlast them."

040493 Hous P DeGuerin talks with Koresh for six hours and says he is more convinced than ever that Koresh and his sect will surrender peacefully.

040593 Hous P FBI responds by saying Koresh is a con man who has already changed his mind twice about leaving the compound. Authorities say they will give it another week.

040693 Hous P Schneider tells negotiations the cult will surrender April 14, after Passover—but federal agents say they see no reason to believe his timetable.

040793 Hous P FBI informs that surrender equation has been complicated by Koresh's almost-forgotten requirement that he get a message from God before giving up. Meanwhile, a book-movie deal is taking shape according to the cult leader's lawyers.

040893 Hous P So much for Passover surrender. FBI says cult leader is again talking prophecy and not an end to the siege. FBI starts thinking about a need to regroup.

040993 Hous P Cultist reveal that six died in the shootout, five men and one woman. FBI begins to talk tough, "We're going to get them out of there."

041093 Hous P Koresh sends FBI threatening letters warning of the ominously of a powerful, angry God.

041093 Knox N-S Steven Schneider tells FBI that six cult members died in initial gunfight. He also said that Koresh and the faithful have no plans to end the 41 days standoff around Passover or Easter.

041193 Hous P FBI is incommunicado for first time during siege. They say although it is Easter Sunday, the day is considered pagan by the Davidians.

041193 Knox N-S Koresh sends angry letter out via Schneider that is written as if it were a divine message. According to Ricks, the letter is threatening and contains Biblical passages, conveying the message of an angry powerful God empowering his chosen people to harm those who oppose them. Four page letter is written in the first person and signed "Yahweh Koresh." FBI said they are preparing for the end of the siege and placing wire around the compound to control cult members when they come out.

David Troy of ATF said they will no longer participate in the daily briefing. "On a day to day basis, we don't think there is anything left to say that hasn't been said. 041293 Hous P Female cult member pregnant and due to deliver in May. Koresh sent out another threatening letter from God.

041393 Hous P DeGuerin and Zimmerman report that cultist will surrender peacefully and that there will be no suicide. DeGuerin says the standoff could end within hours.

041493 Hous P DeGuerin says Koresh has received his message from God. God wants him to interpret the Seven Seals of the Book of Revelations, a reference to the cryptic symbols about the end of the world. Project could take weeks.

041593 Hous P FBI believes Revelations project is a stalling tactic.

041593 Knox N-S Koresh pledges to surrender after writing a religious manuscript, according to lawyer DeGuiren. Koresh wants the manuscript to be studied by two religious leaders but didn't say when it would be finished.

041693 Hous P FBI belittle Koresh's cult as "oddballs" and his Revelations project as probably beyond the talents of the ninth-grade dropout.

041793 Hous P Alaniz leaves compound. Koresh asks for but doesn't get computer to help him with the Revelations project.

041793 Knox N-S FBI compares Koresh with cartoon figure. Ricks poked fun at Koresh's latest offer to give himself up after writing a religious manuscript. "It's like the Peanuts cartoon—is Lucy going to pull the football out one more time?" Ricks said Koresh has already broken three promises, March 2, March 19, and March 31. "After batting 0 for 3—so far he's batting 0—maybe Mr. Koresh will finally tell the truth."

041893 Hous P Koresh moves on to the second seal. FBI says they haven't ruled out other options to accelerate Koresh's surrender schedule. FBI says Koresh won't let anyone else leave because he wants to use them as shields. "We will believe the final outcome (he wants) is a showdown with the government where massive casualties and deaths will take place." (Note: FBI is attempting to shift blame for next day's actions to Koresh).

041993 Houston P FBI assaults compound with gas. Cultist set compound on fire. All Davidians, total 88 people including 17 children are dead! According to Bob Ricks, "We can assume there was a massive loss of life. It was truly an inferno of flames. We have to assume that the children are dead."

The CHAIRMAN. Senator Feinstein, we will turn to you.

Senator FEINSTEIN. I thank you, Mr. Chairman. I am sorry I couldn't be here, gentlemen, for your testimony. I had to be on the floor for a couple of comments.

One of the things that has puzzled me intensely was why the FBI and Justice felt that the use of gas coupled with the tanks would have any chance of bringing them out. Can you clear that up? Can you indicate what the rationale was? I have read the reports. I am reading the April 14 meetings, the strategy. I cannot for the life of me figure how they would have felt that this could have brought that group out of there.

Mr. BOLZ. Well, one of the problems I had when they were saying this is not an assault, this is not an assault, this is not an assault, but when you see a tank coming at you, you think that that is an assault. I don't care what the words you are saying are. They think it is an assault.

In terms of whether or not the tank started the fire or whether the fires were started by someone else, it doesn't really make any difference. It brought about the deaths of all of these people but, most important, the children who were inside there who had no opportunity to make any decisions on their own.

As far as why they chose that particular time, there has been various conjecture as to whether or not some petty bureaucrat in Washington said, hey, this is costing too much money, how long are you going to stay there.

Well, one of the things that we have always said, a job is over when it is over. If you put a deadline on yourself by saying it has

got to be done by this and such time, you are doing precisely that. You are putting a deadline on yourself, and you are not giving yourself the freedom to use whatever tactics you want to use.

Now, of course, I say that is conjecture, whether some bureaucrat said do this or do that. But as far as 51 days being too long, one of the longest hostage situations, a similar-type hostage situation, was done in Philadelphia, and that was the first MOVE incident. There were three, a total of three: the one on Osage Street, the one with the 60 houses being burned; the other one on Pearl Street with police officer Jim Rampe being killed and four or five other police and firemen being wounded. But there was one before that that went for 55 days, and the people finally did come out. That was when Police Commissioner Rizzo was in Philadelphia, and he had a reputation for being a no-nonsense guy, and yet they went for 55 days.

So I look upon it, true, the longest I had was 48 hours, but the resources are a little bit different, and you cannot put a deadline on a job. It is over when it is over, and that is it.

Senator FEINSTEIN. See, I think the major flaw in both Ruby Ridge and Waco was entirely misreading the people involved, and so the efforts were totally counterproductive. Is there anything in the history of prior situations like this that would suggest that when you are dealing with a fanatical group or individual that these tactics would be effective?

Mr. BOLZ. Well, we saw with the Jonestown group that just going in there for an inquiry, a congressional group going in for an inquiry, drove them over the end. We have seen with other groups that have used Revelations in the Bible as part of their justification for what they are doing.

There is a group in Arkansas called the FU group, Father of Us, where they wanted to commit suicide by police so that they could die, lay in their father's ground for 3 days and then rise again from the dead. That was in their mind of what they were going to do. Well, they committed suicide by police, and then they wound up actually killing themselves, shooting themselves, because the police wouldn't—though they did use force to try to disarm them, they wound up killing each other, and they never rose from the dead. But there are groups out there who believe that they can do that. And so if you come with the force, you are only reinforcing what they are looking for.

Senator FEINSTEIN. Do you see any disadvantage to ringing the place with concertina wire and just sitting there if it took a year to bring them out?

Mr. BOLZ. You know, when this thing first went down, a nighttime talk show host said, Why don't they just put concertina wire around it and call it the Prison at Waco? And, of course, we all laughed and scoffed at that initially. But as time went on, that possibility—and when we talk about containment and the application of time—that possibility of just putting the concertina wire around and just applying time, eventually Koresh would have seen the sign that he wanted.

We sort of looked at perhaps the floods in the Mississippi that took place about a month later might have been something that he could have hung his hat on to bring everybody out successfully. I

don't know. I haven't got all those answers, but those are some of the possibilities.

Senator FEINSTEIN. Was there any indication of increased child molestation? I have read the testimony, some of the testimony, that verified that youngsters had been sexually molested, but that was a long-term pattern. I mean, that wasn't something that just happened.

Mr. BOLZ. I don't feel qualified to answer that. Perhaps Mr. Lanning would be better qualified to answer that.

Mr. LANNING. As was previously discussed, I don't have the specifics of the case, but in my opinion, because the sexual abuse was going on the past, it is not necessarily a reason to allow it to continue into the future; that because these children have already been sexually abused, there is no problem in letting it continue.

I certainly agree with what Mr. Bolz was saying, but I see this as a problem. One of the factors that has to be evaluated if you are going to decide to take that approach, just string some barbed wire around and then just wait for as long as it takes, that is fine. That may be one solution. But you have to consider what is going on to the people inside, especially the children. Are they being physically neglected and deprived? Are they being sexually abused? Are they being physically abused? And I am not saying that that in and of itself would mean that you immediately assault or fire tear gas or don't do this, but that is a factor that the commander has to think about. Am I just going to lock these people up in there and allow this abuse to go on for 6 months, 9 months, a year?

It is one thing to say in my life it is a year out of my life. But if a child is 3 years old, that is one-third of the child's life. And I think it is not so easy to just make these arbitrary decisions about how long you are going to allow abuse to go on just because you are just going to let it go on forever.

I am not saying that that justifies an assault, but I think it is a factor that has to be considered.

Senator FEINSTEIN. It is a factor when you have to consider also what the alternative is, because the alternative is death. And somebody has to—

Mr. LANNING. Well, I totally agree with you—

Senator FEINSTEIN [continuing]. Make the decision which is worse.

Mr. LANNING. Right. If you knew with certainty that the action that you were going to take was going to result in the death of these children, then the decision is pretty clear. But if you had some reason to believe that this was an alternative that might not result in that way and might make the problem better, then the decision is not so simple anymore.

Yes, in hindsight we know—

Senator FEINSTEIN. It was 100 percent certain that they were going to die, I think, the minute the attack started.

Now, let me go back to something that I think, in my view at least, is the major criticism, and that is the process that was used where the negotiators don't really call the shots, where the HRT is doing other things at the time, so that when David Koresh, as I said yesterday, let three people leave, they then turned out the

lights. I think that kind of decisionmaking is totally counter-productive to any kind of a positive response.

My question is: Why did that happen? Why wasn't the negotiator able to call the shots, when the music would be played, whatever would happen, as long as they were negotiating?

Mr. BOLZ. Those are things that should be in the purview of the negotiators, because if you are getting something, you have to give something back. That is what negotiating is all about.

The cooperation between the negotiators and the tactical people is an imperative. For example, we have what is known as probing. Tactical people have to see, if an assault, a rescue, must be attempted, which is the easiest way to get into a particular place, not necessarily speaking about Waco specifically but I am talking about in the general principles. And when they do probing, probing must be done with the authority of the incident commanding office and with the knowledge of the negotiators. Because if the tactical people get caught probing by the perpetrator, then the negotiators can tout him off of them by saying, wait a minute, let me get rid of these guys, they shouldn't be doing that, and so you utilize this as a means of saving the lives of those tactical people who might be coming under fire from the perpetrators inside. So that is that cooperative effort.

If I am negotiating, whether it be for a hamburger or a Coca-Cola, and I am getting three people out, I have to give them that Coca-Cola and that hamburger; otherwise, I am going to lose my credibility.

Now, as you indicated, they got three people out, and instead of rewarding that positive behavior, they turned around and punished them by putting out the lights. This was counterproductive to negotiating, and that is where the tactical people and the negotiators have to understand what the principles are from both sides.

Senator FEINSTEIN. I thought it was an established concept. I had been present at the scene for about 48, 50 hours of a hostage negotiation. The negotiator called the shots, and it ended up very successfully.

Mr. BOLZ. Well, we would call the shots through the incident commander. He would be the one calling the shots.

Senator FEINSTEIN. Well, all right.

Mr. BOLZ. But the incident commander, we would send it up to him, and he would send it down. But, actually, you weren't here to see the chart I had up there. We have a line of communication between the negotiator and the incident commander, a line of negotiation between the incident commander and the tactical people, but there is also a line of communication between the negotiators and the tactical people, and that is imperative that that line of communication be a constant, ongoing thing; that whatever the negotiators are going to do, the tactical people have to be aware of it. And if there is a little concern and they don't agree with it, talk it out before you do it, because there is always input from both sides.

Mr. LANNING. That is what I was going to add, and I think Mr. Bolz would agree. It is not the negotiator who calls the shots. It is the overall commander who calls the shots because the negotiator may not be aware of certain tactical and other issues that

the overall commander should be aware of. So the hostage negotiator should have input to the overall commander who ultimately makes the decision in theory with the total picture of what is going on, because the negotiator may not be aware of certain aspects of it.

Mr. BOLZ. Many times the negotiators get credit for the whole thing, but, remember, it is a team effort. It is a team operation, not just one person.

Senator FEINSTEIN. I have, just from local law enforcement, some concern about that. I understand the incident commander being in charge, but I also understand if you have negotiators, you have to listen to them. And not to listen to them, to do what was done at Waco, I think is just dreadful.

Anyway, thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feinstein.

We want to thank both of you. I think you both have been particularly articulate witnesses. You have helped us a lot in this area to understand how really difficult these situations are. And when they turn out disastrously, as this one did, you are always going to be second-guessed to death. But it is a lot more difficult when you are on the ground trying to make a determination as to what should or should not have been done. And I have no doubt that they really believed that by using the gas that they would get them out.

I think there was a lot of sincerity there, and it just didn't happen to work out. And I think part of the reason it didn't is that they didn't take into consideration the beliefs of these people as seriously or as in depth as they should have. And, you know, we can all find fault, and we are definitely finding fault here. But what we are really trying to do with these hearings—there is lots of fault; I think the House did a terrific job of laying out the facts; the Members of Congress over there did a great job; we know the facts—what we want to do now is go on from here and make sure that we handle these matters better in the future than we have done in the past.

You know, there have been lots of people who have been hurt by this, and rightly so, in some ways. But we appreciate both of you. You have given great testimony here.

Mr. Bolz.

Mr. BOLZ. Yes, I just wanted to say, you know, at NYPD we probably made more mistakes than any other agency in the world because we are the biggest laboratory in the world with 8 million people residing there and another 3 million coming in every day. But, knock wood, we have been very fortunate; the mistakes that we have made did not cost any lives.

But we share these mistakes so other people don't have to make the same mistakes, and the unfortunate experiences of other agencies, we also want to learn from those things as well. But we shouldn't put the blame and say that they are the only ones who have done it. We have made more mistakes than anybody, I myself, but we were very fortunate.

The CHAIRMAN. It is the nature of the human being to make mistakes, and it is just a shame that what happened here happened. But now we want to move on and go on and make sure this doesn't

happen again. And because we have had two disastrous incidents like Ruby Ridge and Waco that nobody can justify, that doesn't mean that the literally hundreds of thousands of situations that have arisen in the life of ATF, the FBI, and other Federal law enforcement agencies that have turned out well should be ignored. I think we have got to realize that. Nor does it mean that people should lose their confidence in Federal law enforcement. That is why this committee is overseeing this. The oversight function is very important to lay these things out so people know that there will be criticisms, there will be an accountability. But now we want to lay it out so that our law enforcement people know what is expected of them and that we expect better results in the future.

Thank you both for being here. We appreciate your testimony.

Mr. LANNING. Thank you.

Mr. BOLZ. Thank you.

The CHAIRMAN. While they bring down Graeme Craddock, who is a Branch Davidian currently serving a sentence in the Federal penitentiary—Mr. Craddock was inside the Davidian compound throughout the entire 51-day siege—I will introduce the second panel, and Mr. Craddock will be part of that panel.

The purpose of our second panel is to establish what procedures were used during the siege at Waco. The evidence will support the conclusion that the rules, as established in our first panel, were not observed. Most importantly, the Hostage Rescue Team worked at cross purposes with the negotiation team and controlled much of the decisionmaking process.

I would now like to introduce the panelists:

Clinton Van Zandt has been a member of the FBI negotiation team for the past 20 years. From 1983 until 1992, Mr. Van Zandt was involved in most major hostage situations in the United States and abroad. Since 1992, Mr. Van Zandt has worked in the FBI's Behavioral Sciences Unit, a unit for which I have a great deal of respect.

Peter Smerick is a former FBI supervisory special agent assigned to the Behavioral Sciences Unit at Quantico, VA. He retired in 1994 and is currently a consultant with the Academy Group of Virginia. During the Waco incident, he was FBI's leading behavioral scientist on site.

Graeme Craddock is a Branch Davidian who currently is serving a sentence in a Federal penitentiary. As I have said before, Mr. Craddock was inside of the Davidian compound throughout the entire 51-day siege, and he is accompanied here by his attorney, Patrick Brown, I believe. We are happy to welcome you here as well.

We welcome all three of you here. We look forward to your testimony. We consider it crucial to these hearings, and we will start with you first, Mr. Van Zandt.

PANEL CONSISTING OF CLINTON R. VAN ZANDT, PRESIDENT, VAN ZANDT & ASSOCIATES, FREDERICKSBURG, VA; PETER SMERICK, VICE PRESIDENT, THE ACADEMY GROUP, MANASSAS, VA; AND GRAEME CRADDOCK, FORMER RESIDENT, BRANCH DAVIDIAN COMPLEX, WACO, TX; ACCOMPANIED BY PATRICK BROWN, COUNSEL

Mr. VAN ZANDT. Thank you. Senator Hatch and members of the committee, as you indicated——

The CHAIRMAN. Could I just say, if you can summarize it, I would really appreciate it. We are pressured for time here today, but your testimony is critical, so we will take it.

STATEMENT OF CLINTON R. VAN ZANDT

Mr. VAN ZANDT. OK. I recently retired from the FBI after 25 years of service to include the 20 years as a Bureau hostage negotiator. My last few years was spent as a supervisor in the FBI's Behavior Science/Investigative Support Unit, now part of the Bureau's Critical Incident Response Group. I am also a military veteran, having served with a U.S. Army intelligence unit in Vietnam.

I was asked by FBI headquarters to travel to Waco 3 weeks into the situation. I was to be the Bureau's negotiations coordinator, replacing the current coordinator at Waco who was leaving to deliver a speech overseas. I initially protested this assignment. I was no longer assigned to the negotiations program, and I did not want to inherit a 3-week-old negotiation situation in which decisions had been made for which I had no voice, decision that I believe ultimately influenced the final outcome.

First and foremost, the Branch Davidians were responsible for their situation and the eventual outcome, to include the setting of the fires that fateful day that took so many lives, including the young innocents. Adult parents are responsible for the safety and well-being of their children. David Koresh and his followers abdicated that responsibility in a terrible fashion. The Waco investigation has proven that multiple individuals knew about and put the actual matches to the flammable materials that began that holocaust. They jointly share the guilt for the fire and the horrific loss of life.

Nevertheless, there is plenty of responsibility to go around. In 1985, the ATF faced a similar group in rural Arkansas. The Covenant, the Sword, and the Arm of the Lord, known as the CSA, was a right-wing, religious survivalist group of 85 men, women, and children in a 300-acre compound. They were heavily armed and believed a confrontation with the Government was inevitable. At that time ATF called upon the FBI for assistance before the development of their own assault plan. The FBI deployed the Hostage Rescue Team under then Comdr. Danny Coulson. I deployed with them as a negotiator. We were able, with the assistance of the Arkansas State Police, to tactically encircle their compound and initiate negotiations. In 4½ days, they left their compound without a shot fired. Negotiations worked then, just as they did in the 1987 Atlanta, GA, and Oakdale, LA, prison riots and in hundreds of similar situations across the United States and the world.

I once co-authored an article entitled "Hostage Negotiation, Law Enforcement's Most Effective Non-Lethal Weapon." We know that

in approximately 85 percent of hostage or barricade situations where trained hostage negotiators, often supported by behavioralists, are allowed the time to seek a nonviolent resolution, they obtain this goal. This is not to say that specially trained and equipped tactical teams such as FBI SWAT and the HRT are not needed. In fact, exactly the opposite. We will always need a professional tactical capability in law enforcement, the "Final Option," as the British Special Air Service [SAS] their equivalent of our Army Delta Team, is known. The presence of a tactical team gives the on-scene commander many options and provides both operational and psychological support to the negotiation effort.

This works both ways. In essence, the negotiators can support the tactical process as well. In the 1991 riot at the U.S. prison in Talladega, AL, we used the negotiators to seek a nonviolent resolution. When the threat to the hostages rose to the degree that we firmly believed the inmates would injure or kill the hostages, we recommended a strategy in which the negotiators caused the hostage takers to develop a false sense of security. This psychological tactic was then used to create the opportunity for the HRT and other FBI SWAT teams to enter the prison, rescue the hostages, and retake the cell blocks without serious injury to any of the rioting prisoners. This was a classic negotiation/tactical, hand-in-hand operation. We met, talked, scripted, and otherwise ensured that the command, tactical, and negotiation team leaders were on the same sheet of music. The Talladega success could not have been achieved without that working relationship.

This was not to be the case in Waco. Where we met as a crisis management team at least twice a day at the Talladega riot, we met in a similar fashion on only one occasion in the 4 weeks that I was in Waco. Our written assessments warning of the dangers associated with too much tactical pressure went basically unheeded. The negotiation team leaders were refused access to the Hostage Rescue Team to discuss the role of negotiations in attempting to resolve the incident. Instead of cooperation, we had discord. Many of the tactical personnel vented their frustrations on the negotiators. The tactical commander appeared to do nothing to counter this. Tactical team members said they knew the negotiators were secretly providing the Davidians with steaks to eat and that the negotiators had willingly revealed HRT's knowledge of the location of the 50-caliber sniper rifle, which was then moved by the Davidians. This conversation with the Davidians took place at the request of the HRT commander, who demanded they be told to remove the rifle from the tower.

When we attempted to push the cooperation issue with the tactical commander, we were told that anything the tactical teams needed to hear about negotiations, they would hear from him, not the negotiators. He also indicated that were it not for the negotiators and their gentle handling of the Davidians, the tactical teams would have routed them from their compound in the first week. For almost every positive concession the negotiators were able to obtain from the Davidians, the tactical team was ordered to counter with a negative response. The Government did not trust David Koresh, and the Davidians learned not to trust us.

These are but a few examples to say that we were not on the same sheet of music. I believe that the initial confrontation between ATF and the Davidians should not have taken place, at least not as an armed confrontation between citizens and those sworn to protect our citizens. ATF agents should never have been ordered into such a confrontation. The FBI was called in to take over a situation not of their own making, one that was broken almost beyond repair. The lack of coordination between the tactical teams and the negotiators further exacerbated an already bad situation and added emotional fuel to the final physical fire that consumed the Davidians. The Branch Davidians were responsible for the fire and the ultimate loss of life, but we should have handled it better. The American people have the right to expect better, and I pray that the creation of the FBI's Critical Incident Response Group will ensure further situations are handled more effectively.

I have worked for every FBI Director to include J. Edgar Hoover. Director Freeh is the best Director the FBI and the American people have ever had. He listens, he cares, he seeks counsel from all elements of the FBI and the outside community. I believe he is the right Director to lead the FBI past Ruby Ridge and Waco. The times I have met with him, he expressed genuine concern in handling such situations better. Neither he nor the rank-and-file FBI agent seeks to confront U.S. citizens in such a violent manner. The FBI is better than this.

I saw a bumper sticker on a car the other day. It said, "I Love My Country, It's the Government I'm Afraid Of." Waco and Ruby Ridge have become Pearl Harbor and the Alamo for many citizens, especially those who subscribe to some kind of national conspiracy or trilateral council theory. Should those persons charged be found guilty of the Oklahoma City bombing, they should not have the opportunity to say the Government or the devil made them do it. Those who bomb, those who derail trains, and other violence-prone fringe members of American society should not point to the Waco example to support their theory that the Government is a conspirator against its people. We are still one Nation under God, and we must continue to believe and work toward this notion.

We made mistakes at Waco. For all the people who had no choice but to sit on the deck of the Titanic and watch the iceberg approach, there were those in decisionmaking positions in the ship's wheel house who failed to note the warnings of that iceberg. Decisions were made to face the Davidians in a confrontational manner, decisions which proved to support David Koresh's self-fulfilling prophecy concerning his predictions of the actions of the Government. We can, we must do better. The American people expect it, and we owe it to them.

The CHAIRMAN. Thank you, Mr. Van Zandt. That is a very critical and strong report to us, and we appreciate your taking the time to be here.

Mr. Smerick, I understand you and Mr. Craddock do not have prepared statements, but I would like you to make whatever comments you care to make at this point.

STATEMENT OF PETER SMERICK

Mr. SMERICK. Mr. Chairman, members of the panel, I thank you for having me here this morning. My name is Peter A. Smerick, and I am a retired supervisory special agent of the Federal Bureau of Investigation.

For 24 years, I had a variety of assignments in the field of general criminal investigations, 10 years within the FBI laboratory, several years at the FBI Academy as an instructor in forensic science and crime scene management, and for the last 7½ years of my career, I was assigned as a criminal profiler to the FBI's Investigative Support Unit, which was part of the National Center for the Analysis of Violent Crime.

When the average American citizen thinks in terms of a criminal profiler, they conjure up an image of Clarice Starling and Jack Crawford in the movie "The Silence of the Lambs." In reality, we as profilers did much more than profile serial killers and profile serial rapists. We were violent crime analysts, and during the course of my career and the career of my colleagues, we have analyzed more bizarre, unusual, and dastardly acts of violence in this country than perhaps any other organization.

Besides analyzing the behavior of rapists and murderers and people who tamper with products, one of the other services that we provided is what we called personality assessments, personality assessments of violent offenders.

When the ATF raid on the compound in Waco ended in the situation that it did, the hostage rescue team was called in, and at the same time I was asked by the Bureau to go to Waco, TX, to do a personality assessment of David Koresh, do a general assessment of his followers, and do an assessment of the situation in order to make recommendations to the negotiators and to the commanders as to what was going on in the mind of David Koresh and what courses of action should we follow in order to resolve this particular crisis.

I was not selected because I was the best agent from the Investigative Support Unit. In fact, any one of my colleagues could have handled the assignment, including Ken Lanning, as well as myself. In conducting a personality assessment, I had the assistance and cooperation of Dr. Park Dietz, a forensic psychiatrist and attorney who has been a consultant to the FBI for many years. I also had the assistance of Special Agent Mark Young from the Houston Division, who was a profile coordinator and a man that I had had successful meetings with in the past.

In order to do a personality assessment of David Koresh, you had to have intelligence. And, quite frankly, the Alcohol, Tobacco, and Firearms investigators had done an outstanding job on developing background information on this particular individual. And so what myself and Mr. Dietz and Mark Young eventually did was analyze hundreds of documents, many of them statements of people who knew David Koresh intimately, from his formative years up until the time of February 28, 1992. And from these interviews of people who were not only pro-David Koresh but very anti-David Koresh, we were able to put together an analysis of the mind of David Koresh. And this morning, I think what is equally as important as analyzing the behavior of the FBI is analyzing the behavior of

David Koresh, because as Mr. Van Zandt indicated, this crisis in Waco, TX, was designed and created by David Koresh in order to fulfill his prophecy of the end of his world coming, to die at the hands of the beast, and the beast being the U.S. Government.

In analyzing David Koresh, it should be understood that we are dealing with an individual here that throughout most of his adult life was a failure—a failure. A man with a ninth grade education who came from a dysfunctional family, an individual who found his true calling when he discovered that he could memorize large portions of the Bible and be able to reiterate and enunciate Biblical passages in a very concise form, and convince people of his beliefs. David Koresh was a charismatic leader among members of the Branch Davidians.

What created a problem for us within the FBI and the reason we did not use so many outside religious experts is that there was not one religious expert in this country who could have debated with David Koresh and understood him the way we did, because David Koresh would interpret the Bible in his own fashion, and if he ever was backed into a corner, would reinterpret his findings. And since he, in fact, was the sinful messiah and the only person who was really capable of understanding the Seven Seals, it would have been folly to think that another theologian would have been able to debate with David Koresh and convince him of the errors of his ways.

David Koresh did, in fact, have a psychopathic personality. He was, in fact, very controlling, very manipulative, and, in fact, was a sadist in his own right. David Koresh, I learned from one of his ex-wives who I interviewed while I was in Waco, TX, was the type of man who would never be told what to do. David Koresh was a man who was going to control his own destiny. And so we in the FBI, quite frankly, had inherited a situation in which, regardless of how clever we could be as behavioral scientists, how clever we can be as negotiators, we were still confronted with an individual who, for the last several years, had been planning this day of reckoning, this day of atonement where he and his followers were going to be confronted by the beast and the final outcome was going to be in his hands.

Thank you.

The CHAIRMAN. Thank you, Mr. Smerick.

[Information received from Mr. Smerick follows:]

MEMORANDUM

To: SAC's WAC MUR (89B-SA-38851) (MC 80). Date: 3/7/93.

From: SSA Peter A. Smerick & SA Mark C. Young, Psychological Profilers.

Subject: Negotiation Strategy Consideration.

The following ideas and suggestions are offered for consideration, in no particular order of preference:

1. Floodlights at night.
2. Noises, sirens, etc.
3. Loudspeakers with ideology and Biblical references discrediting Koresh.
4. Chemical lights around the compound.
5. Flares at night.
6. Aircraft fly-overs.
7. Scent of food cooking.
8. Start military armored vehicles engines periodically (out of sight of the compound).
9. Have armored vehicles drive back and forth periodically.

10. Pull all personnel back, then move them forward again.
11. Shut off utilities.
12. Jam television/radio reception.
13. Contaminate water supply, for taste only, not to cause illness.
14. Continue moving the perimeter closer to the compound.
15. Video tape Koresh's former attorney telling Koresh he can beat the charges, not go to jail, spread his message to the world, and have movies made about him.
16. Discontinue negotiations for awhile.
17. During news conferences, describe David as a man hiding behind innocent children.
18. Utilize a third party negotiator (such as McClellan County sheriff, Jack Harwell, who has had a history with these subjects, including the arrest of Koresh, in the past).

19. Tell David all negotiations are off and a fence will be built around his compound, completely isolating him from the world. Only milk will be sent in to his children. His message will not get out and for all practical purposes, he will become a prisoner, without his day in court.

20. Call David, tell him from now on he will be portrayed on the news media as a common criminal known as Vernon Howell.

We certainly have a number of options to consider which could increase the stress and anxiety on David Koresh and his followers. Many of these options however, would also succeed in shutting down negotiations and convince Koresh and his followers that the end is near.

If trust between David Koresh and negotiators is broken, we are then faced with the prospect of eventually taking physical action against the compound, to destroy it, thus forcing people out. If the compound is attacked, in all probability, David Koresh and his followers will fight back to the death, to defend their property and their faith, as they believe they did on February 28, 1993. If that occurs, there will have to be a HRT response and the possibility of a tremendous loss of life, both within the compound, and of Bureau personnel.

Commanders are thus faced with the prospect of defending their actions and justifying the taking of the lives of children, who are with their families in a "defensive position", defending their religion, regardless of how bizarre and cult-like we believe it is manifested.

If we physically attack the compound, and children are killed (even by Davidians), we, in the FBI, will be placed in a difficult position. The news media, Congress, and the American people (who are currently applauding our negotiating efforts), will ask questions:

Why couldn't you just wait them out?

What threat did they pose to anyone, except themselves?

Why did you cause children to be killed?

Attached to this report is a news article (one of many) relating to the actions of the Philadelphia Police Dept. against the "MOVE" sect, a "back to nature" cult, in 1985. Their house was deluged with over one million gallons of water, over 10,000 rounds were fired, during the initial assault, and a bomb was dropped on the roof of the house. As a result, eleven people, including 5 children, died.

The public outcry, against the tactics employed by the Philadelphia PD continues to this day.

It is imperative that the FBI learn from the mistakes made in Philadelphia.

RECOMMENDATIONS

1. We recommend a continued effort to negotiate the release of all persons inside the compound, with assistance of Sheriff Jack Harwell. His participation is necessary because of Koresh's hatred and distrust of the Federal Government.

LEVEL 1—78 OF 93 STORIES—THE ASSOCIATED PRESS

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MARCH 6, 1986, THURSDAY, AM CYCLE

Section: Domestic News.

Length: 697 words.

Headline: Commission Urges Grand Jury Probe of MOVE Bombing.

Byline: By Lee Linder, Associated Press Writer.

Dateline: Philadelphia.

Keyword: MOVE Report.

Body: A special commission Thursday condemned Mayor W. Wilson Goode and top aides for approving the May bombing of MOVE headquarters that left 11 people dead and hundreds homeless, and called for a grand jury investigation of the tragedy.

Goode, who appointed the 11-member panel, responded to the 70-page report by saying he would not resign.

The panel called Goode grossly negligent in his handling of the May 13 confrontation between police and members of the radical group who had barricaded themselves into a row house in the predominately black west Philadelphia neighborhood.

Eleven people in the house, including five children, died in a fire that swept through the neighborhood when police dropped a bomb on the roof of the house in an effort to dislodge a fortified rooftop bunker after a day-long siege.

The fire destroyed 61 houses, left 250 people homeless and caused \$15 million in damage. Police had gone to the house to serve warrants on four MOVE members, and evict the remaining residents.

The deaths of the five children "appear to be unjustified homicides," the commission said.

District Attorney Ron Castille said his office would decide whether to empanel a special grand jury, but did not say when the decision would be made.

Goode and his top aides—former City Managing Director Leo Brooks, former City Police Commissioner Gregore Sambor and Fire Commissioner William Richmond—should have rejected the plan to drop a bomb on an occupied row house, the * * *

The CHAIRMAN. Mr. Craddock, you are here; you have your attorney here with you who we will show respect for, but I understand you don't have a prepared statement, but we would like to have whatever comment you can. You were inside the compound for all of the 51 days, and the microphone is yours.

STATEMENT OF GRAEME CRADDOCK

Mr. CRADDOCK. That is correct. Mr. Chairman and members of the panel, before I start and give my statement, I think I should tell you I am feeling a little bit nervous, so if it comes through, I hope you can bear with me.

The CHAIRMAN. We understand. Just relax and we will be happy to hear what you have to say.

Mr. CRADDOCK. What I believe I am trying to show you and to tell you is the reasons why I believe the negotiation process failed and the reasons why more people did not come out or, in fact, the reasons why this whole standoff did not end in a peaceful manner. I firmly believe that it could have ended in a peaceful manner. But you have to understand the minds of those of us on the inside, and I would just want to give you a little background of how I got involved in all this in the first place.

First, I was raised in a church environment all my life. I was born into it through my parents and brought up and I remained in it through all my life. The type of environment which I was indoctrinated in through my religious background was based on an understanding of the Bible, an understanding of its teachings. I had been involved in this for all my life, and through my years of education, through high school and college, I had never really given a great indepth thought to my beliefs. I had just gone to Longwood Church because that was where I was brought up, where my parents went to, where my friends were. And I had come to the end of my education, and I started thinking more in terms of, you know, my religious beliefs, which I had had intentions of thinking about, studying, but because of my educational commitments I never really got involved. But once freed from my educational com-

mitments, I began to study things in the Bible. And because I didn't want to base my beliefs on the institution I was brought up in but what I was taught to base my beliefs in was the Bible. And that is what started my searching for what I believed. I wanted to know the reasons why I believed what I did. I wanted to know what the Bible taught.

So that started me on a quest to search and study the Bible for myself, and if you have read the Bible for yourself, you know it is a very hard book to understand. So I started listening to different people, different commentators, and still it was a slow process. Eventually I met another Branch Davidian, which I knew very little about. Initially, their beliefs sounded very strange to me, but I had an open mind and I was prepared to listen to what anyone was prepared to tell me and I wanted to hear.

So that is what began what caused me to get involved with the Branch Davidians. I met someone, and they started showing me certain things. What they showed me in my mind made a lot of sense to me. It was very logical. There were certain things which at first appearances sounded very strange. I was initially told that David Koresh had more than one wife, which to me was totally—somewhat repugnant. But on the other hand, in my religious background I was also aware of stories of the Bible like King David who had 700 wives and the story is told in the Bible, the way the prophets instructed, King David was told, that it was God that gave King David his wives. And if I condemn a person on the basis of having more than one wife, then I can condemn King David of old; not only King David, but God who gave those wives to King David. So I don't believe in condemning a person. I don't believe that that is a Christian thing to do. So there were a lot of things which I accepted without condemning other people. I accepted the teachings of the Branch Davidians because it made a lot of sense to me, to my mind, as he spoke to my mind. That is what got me involved.

Now, in regard to some of the events which occurred during the 51-day standoff, those of us who were inside during this time were convicted from what David Koresh showed us from the Bible. It was that basis that convicted us of something. We genuinely believed David Koresh. We weren't trying to deceive anyone. You know, if we were deceived ourselves, if David Koresh was a trickster, we were genuinely deceived ourselves.

When David Koresh said to the negotiators—I don't know whether it was March 2—that God had told him to wait, we genuinely believed him. I have no doubt amongst the negotiating team and yourselves believe that David Koresh was pulling some sort of scam or he was obviously lying or stalling. But you have got to understand the mind of the Branch Davidians inside. We genuinely believed him. If we were deceived, then we were genuinely deceived.

So to raise another concept to you, we also believed in the power of God to protect people.

Senator LEAHY. To do what?

Mr. CRADDOCK. To protect people.

Senator SIMON. Could you pull that mike just a little closer?

Mr. CRADDOCK. OK. Historically, the Bible reveals certain stories that happened to Israel of old. One story was a time when Israel had a king by the name of Hezekiah, and at that time the ruling

power in that world was a government by the name of the Assyrians. And this particular time the Assyrians sent 185,000 of their army and besieged Jerusalem, which in all respects was a small town. And the Assyrian general called on those inside to come out and surrender and take them to their land, which was a beautiful land just like theirs.

Now, people ask us, Why didn't we come out? I can ask the question, Why do you think the people in Jerusalem in the time of Hezekiah, why didn't they come out? Because they believed that God was going to protect them. And in that situation, the story goes that an angel came and killed 185,000 of the Assyrian Army. In our situation, we thought God was just as capable of protecting us through whatever means, even if it was that similar means, as he did then, as he could now.

But those stories in the Bible also reveal times when God didn't protect his people. There is what I call the Aiken syndrome. Aiken was a member of the Israeli Army that conquered Jerusalem when they went into the Promised Land, and he did something he shouldn't have done. He took a garment that he shouldn't have taken and hid it. And the next time he went to battle, instead of God protecting and having a victory, the story goes that they were slaughtered. It was because of one man.

So, likewise, in our minds, if someone amongst us, our group, was doing something they shouldn't, God was going to protect us. And if that situation didn't correct itself, the end result was going to be disastrous.

So while we were in there, we had the state of mind that, you know, God was going to protect us, but there was a chance he couldn't or he wasn't going to. So that was always a fear on our minds. But our belief, our convictions and our beliefs, did not prevent us from coming out. You don't prevent David Koresh from sending people out because he realized that was an option. We, the people inside, were aware that negotiators, the people on the outside, did not hold our beliefs, and we could understand and relate to that. We could find it quite understandable.

But in our situation, I don't believe the negotiators or the people outside really appreciated or understood the state of mind of the people inside.

David Koresh was throughout that 51-day standoff sending people out, and it was my understanding that if the FBI or whoever it was that was controlling the situation on the outside were open and honest with us, then all of us were obligated to come out. He once made a statement to that fact. If they were open and honest to us, we had an obligation to them. It wasn't a fact that we did not respect the FBI or the Government. It was the position that we held that God was the one who was really in control, God was one that we should respect, and then the Government second. But the point is it didn't preclude us from respecting the Government. We believed that we had to respect the Government, but God first. If God told us to wait, then we have to respect that first.

OK. Now, for certain things which happened during the negotiation stage, I can only remember a certain number of these incidents, and there are a lot of things which I have forgotten since. Initially in the negotiation stage, I remember there was negotia-

tions for milk. The women inside weren't producing milk for their babies. Because of the situation they were in, the tension, they had stopped producing breast milk. I think it was Steve Schneider who was doing the negotiations at that time who requested them to bring in some milk. As I recall what was being said by Steve at the time, they had agreed to send one of the children out in exchange for milk, which, you know, they sent the child out. But when it came time for the milk to come in, days went by and nothing came in, and next they were negotiating again. Well, we want the milk, and they were saying, well, send us some children out and we will send the milk in, which is sort of reneging on their previous agreement. They would send a child out for milk, and they are negotiating again for children to come out for the milk, and they didn't honor the first agreement to send the milk in.

While this was taking place, they were negotiating for Peter Gent's body, and we would be listening to the radio——

Senator FEINSTEIN. For what? I am sorry. Negotiating for?

Mr. CRADDOCK. Peter Gent's body. He was one of the people killed on the initial shootout. And as I recall what we heard over the radio, I think it was the press conference or something like that, what the Government—the FBI, I should say, was saying was that they tried to get Peter Gent's body but we had refused to let him out. But what I understand the negotiation was actually about, what I heard from Steve, was that Steve had asked—was the one who had asked them to take the body and they had said, well, we will take the body if you send two people out to explain to the coroner what happened.

Now, the fact was none of this—nothing about this explanation about the two people coming out, nothing about the reasons why they come out, why they wanted them to come out, was explained in the press conference, and people were getting upset because what was being explained to the public was not really what was happening through negotiations. And this was making people on the inside rather angry at what was going on.

If this sort of thing kept up, it was going to hinder the negotiation process as it went along. And this is what did happen. There were often things said during the press conferences which we knew weren't true, and that upset a lot of people on the inside.

If I can go to what happened on the last day, I recall—sorry, on the 18th, this was the day before the fire. This was something which was prevalent on my mind that final day and certain things which happened, which I might get to later, is that we had heard—now let me explain what happened first.

They had moved the vehicles in to take the remaining vehicles that were in front of the building away. OK? And in doing so, David Koresh come to the phone and was talking to the negotiators about this process. And I was sitting listening to him talk on the phone, and from what I recall, he sat very calmly and talked to them about what they were doing, and they got on to other subjects, and I don't recall him getting extremely angry. He may have been annoyed at some of the things that were being suggested through the conversation. But I wouldn't describe him as being excessively angry.

Now, what we heard come back later through the press conference, I think Bob Ricks was giving a statement, and from what I remember of what he was saying, he was very jubilant about the fact that David Koresh was out of control, ranting and raving, using all sorts of profanity, swearing, which was nothing to what I remember was actually taking—took place.

You know, and the thoughts that were going through my mind is, Why are they doing this? And the only answer that I could see was that they were trying to dehumanize us in order to justify taking some sort of action, justify to the public what was going on.

This one particular incident which I want to talk about is on March 21. This was a major turning point I think in the negotiation stage. Up until that time, various individuals had left the building at various stages. On March 21, there were seven people that left that building over less than a 24-hour period. It was normally a practice of David Koresh, when he sent someone out, to give them a Bible study. Everyone that went out, as far as I know, were given a Bible study, sometimes for an hour, 2 hours, 3 hours, for whatever length.

Steve came down and gathered a lot of us who could attend in the chapel area, and he told us that he was instructed by David to give us a Bible study, that David was talking about sending 20, 30, or 40 of us out. So this Bible study commenced. It went for about 2 or 3 hours. Toward the end of it, we got a message sent to us from the negotiators asking that Steve or David come to the phone. I think David was resting. Normally Steve was the one who came to the phone, anyway.

Steve was trying to finish up this Bible study, and he didn't want to leave it because he was instructed by David to give it. So he sent a message back to the negotiators to hold on, he will talk to them in an hour or so. The message came back from the negotiators demanding and threatening that Steve come to the phone. Demands and threats upset Steve. He refused to come. He was going to finish the Bible study.

Well, the next thing we hear is these engineering vehicles come through and they start clearing away the rubble around the building. Steve had told them during this stage of sending these instructions, as I remember, that he had been up for about 36 hours without sleep. He wanted them to give him a bit of time to sleep as well. And, of course, what happened after that, that night they increased the volume of the music, and the whole effect on Steve and David, given the fact that they had just sent seven people out, was a bit like a slap in the face.

You know, if you have ever given a present to someone, it makes you feel good. What is it like to give someone a present? You feel good about it. You thought they feel good about it. But then to have them slap you in the face, and the effect on them was—you know, that was it as far as sending people out.

After March 21, there was only one person that was sent out, and that was Livingston Fagan, and I think David had made up his mind prior to March 21 to send Livingston Fagan out anyway. So it wasn't—I can't put it down to one particular thing which prevented people from coming out. Through the early stages it was like one hurdle after another. They would do one thing. You get

over it. You send someone out. As soon as they send someone out, they do something, like when they originally cut off—sorry, when they finally cut off the power. We had just sent two people out. That is when they cut off the power. It was like everything we did, every time we did something positive, they would come back and do something negative, like a slap in the face. And it was this process. It wasn't just one particular incident. It was one thing after another which prevented people from coming out.

You know, if this thing was ever to happen again, you know—and hope to God it won't, but I just hope that, you know, we get a little bit more organized in our negotiation process, because that is where it really broke down.

The CHAIRMAN. Well, thank you, Mr. Craddock. That was very interesting, and all of the witnesses have been interesting.

Let me start with Mr. Van Zandt first. A variety of audio tapes were played over the loud speakers during the negotiation process. These tapes included the recordings of slaughtered jackrabbits. Let's just play that just for a second again, because it is memorable but I think for your purposes here to testify. Go ahead.

[Audiotape played.]

The CHAIRMAN. Why were those tapes used, and what effect did they likely have on the negotiation process, in your opinion?

Mr. VAN ZANDT. I was here for Frank Bolz's testimony so I am aware of that.

The CHAIRMAN. So you heard them. OK.

Mr. VAN ZANDT. Sound, as Frank said, the manipulation of anxiety, has a positive place in negotiations. But many times you can have a sound principle and the wrong application.

In this case, the overall effect, first of all, the tapes were requested, in essence, some sound had been requested by the tactical team to basically deny the Davidians sleep. I recall conversations where the premise was the tactical teams are going to be up all night and, therefore the Davidians should be up all night, and with the consideration on the tactical side that by keeping them awake, that would stress them and perhaps drive them to surrender faster. And I think that was the premise for the use of them.

There was no one in the FBI who said let's find the most horrific sound we can find, let's vote on slaughtered rabbits, and let's play that. That wasn't done. But what was done was that when the decision was made, let's come up with, based upon the request of the tactical team, a number of sounds, my recollection of what was done was that someone with audio skills and multiple sound-generating tapes and CD's just put together an arbitrary string of sounds, in essence, high sounds, low sounds, sirens, bugles, aircraft, glass breaking, and it was done in a manner such as to just come up with 10, 15 minutes of tape that would play that would be sounds sufficient to deny the Davidians restful sleep at night.

There wasn't anyone who said let's come up with the most horrible sounds we can find and have a negative impact on the children. But hindsight being 20—20, one-of-the things we had suggested from the negotiation standpoint is if we are going to do this, how about some type of just sound-generating machine which would have a warble or some other type of sound to it. Whether that wasn't available, I don't recall the circumstances, but based

upon the request of the tactical team, that audio tape was put together and played. And 1 segment of that obviously was the sound of slaughtered rabbits.

The CHAIRMAN. It is a pretty eerie sound.

Mr. VAN ZANDT. Absolutely.

The CHAIRMAN. I think that would keep people up if it was played for any group of people. But behavioralists believe that several disastrous decisions were made during those negotiations. Those include the decision to cut off the power in the compound on March 12, that is after seven Davidians had left, as Mr. Craddock had mentioned; the order to bulldoze vehicles on March 21 when 30 or 40 Davidians were preparing to leave; and the decision to keep ATF involved in the negotiations. Do you disagree that those were all kind of disastrous decisions?

Mr. VAN ZANDT. I think, as I said in my statement, for the 4 weeks I was there, every time through negotiations we thought we had something going with the Davidians, we were trying to maintain a degree of honesty, and, you know, just for Mr. Craddock's sake, I—you know, I am a Christian, and I have very strong Christian Biblical-based beliefs. One night I spent 2½ hours talking to David Koresh one-on-one about the Bible because he had asked to speak to a Christian FBI agent, and I was going to do everything I could. If I could reach him through Christianity, if I could reach him any way, I was going to do it. And the next day I was told no more Bible babble—in essence, we don't want you talking Christian topics. We want you talking get those people out of there, and that is the only thing—

The CHAIRMAN. It might have been the one way you could have gotten some cooperation.

Mr. VAN ZANDT. Well, that is the way I thought we could have. And every time in the 4 weeks I was there I felt that we were starting to gain some ground, we were starting to establish trust, a decision was made to take a tactical option twofold: No. 1, what the tactical team was trying to do was to clear the area open enough so if they had to do an emergency assault, they could, in fact, go in without the Davidians running out being intertwined among the cars, firefights with women carrying babies, shooting guns. I mean, we looked at the worst-case scenario. But the other side was a form of punishment to the Davidians because they weren't doing what was being demanded of them from the command, which was everybody come out at one time. I mean, we took time, Senator, where we would ask, OK, can we go and work to try to get 2 or 3 people out, and we were told I want 50 people out. You say, well, that is unrealistic, 50 people are not going to walk out at one time. But we can make a concession that perhaps will get 1 or 2 people out, and we were told again, no, we want 50 people out today or else something negative is going to happen.

Well, you may as well have thrown your hands up in the air because something negative then was going to happen. And as I say, my personal belief, my professional belief, is that we lost any chance of trust we had because of the tactical options that were being executed throughout this time.

The CHAIRMAN. Thank you.

Mr. Smerick, let me just read from a memo you authored during the siege at Waco.

If we physically attack the compound, and children are killed, (even by Davidians), we, in the FBI, will be placed in a difficult position. The news media, Congress, and the American people, (who are currently applauding our negotiation efforts), will ask questions: Why couldn't you just wait them out? What threat did they pose to anyone except themselves? Why did you cause children to be killed?

Attached to this report is a news article (one of many) relating to the actions of the Philadelphia Police Department against the MOVE sect, a back-to-nature cult, in 1985. Their house was deluged with over 1 million gallons of water, over 10,000 rounds were fired, during the initial assault, and a bomb was dropped on the roof of the house. As a result, 11 people, including 5 children, died.

The public outcry against the tactics employed by the Philadelphia PD continues to this day.

It is imperative that the FBI learn from the mistakes made in Philadelphia.

Recommendations: 1. We recommend a continued effort to negotiate the release of all persons inside the compound, with assistance of Sheriff Jack Harwell. His participation is necessary because of Koresh's hatred and distrust of the Federal Government.

On reflection, it appears that the failure of FBI officials to carefully consider your position was pretty unwise. Do you care to comment on that? That is the memorandum you gave to them right during the siege?

MR. SMERICK. I think you have to look at the entire situation from the beginning? When the Hostage Rescue Team was deployed to Waco, TX, I arrived there I believe on the 2d of March, and the consensus in the negotiators' room and in the command center was that, Smerick, you are not going to be needed here because this situation is going to be resolved very quickly; David Koresh has promised us that if a certain tape is played over the Christian Broadcasting Network expounding upon his beliefs, he was going to surrender and this situation was going to be over.

One of the areas that we explore within the Behavioral Science Unit at Quantico is linguistics. We study language, both the written word and the spoken word. And I was concerned with David Koresh's statements because he said, I am going to surrender to the world; he never said, I am going to surrender to the FBI. And so that concerned me.

Then, second, he never gave an exact timetable as to when he was coming out, and sure enough, after the tape was played and all of the people were slowly coming out of the compound, that is when God told David to wait, and that is when the standoff began. And I believe that unsettled the commanders within the FBI that David Koresh had lied to them.

Shortly afterwards, I became very concerned and the negotiators became very concerned because there seemed to be a movement toward a tactical resolution of this standoff even before negotiation processes were beginning. When I had learned that two M-60 tanks were being brought up from Fort Hood, TX, my first thought was, oh, my God, we are going to move prematurely on this compound, we have all of those children in there, and we are going to have a major problem with this. And so that was the reason why the first memo was written on the 5th of March to advise the FBI to exercise caution here, that David Koresh and his followers did, in fact, truly believe in what they were saying as far as their religious beliefs.

The second memo that you have quoted from was prepared on the 7th of March and was in response from the commanders for a list of every possible option that we could consider to resolve this particular conflict. And of the 20 items that are found on my memo, one of the items was, in fact, playing loud noises, et cetera. But what I also said in that memo is that any and all of these tactics which have been recommended could be counterproductive to the negotiating process and create, once again, a problem, as you reiterated here in this particular room.

The playing of the dying rabbit tapes was never approved by myself or anyone else in the Behavioral Science Unit. In fact, the outcome of the playing of that tape was counterproductive not only from the standpoint of the response within the compound, but as I understand it, the tape also attracted coyotes from the prairie, and now our Hostage Rescue Team had not only to look at the compound, but to look behind them for these animals coming toward them.

So the bottom line is my analysis and the analysis of Park Dietz and the analysis of Mark Young, we all were in agreement with the negotiators that this was a situation that required a great deal of patience. David Koresh had the opportunity of several years of conditioning his believers that the end of the world was coming, we were going to die at the hands of the beast, meaning the U.S. Government, and I felt that we were not going to be in a position of changing your opinion overnight unless the negotiators had the opportunity of working with them.

So on the one hand, it has been said in the news media that the FBI had ignored my recommendations and my suggestions to go cautiously. In reality, they did not ignore my recommendations, and for 51 days a negotiation process of some sort took place. The real dilemma, as Mr. Van Zandt brought out, is that there are times you punish people when they don't do what you want them to do; there are times you reward people, et cetera. And what we ended up doing in Waco, TX, was employing the wrong tactics at the wrong time.

But, I wanted to make it perfectly clear to the panel that these decisions were made by the commanders and that all I and Mr. Van Zandt and Mr. Noesner can do as negotiators and behavioral scientists is making recommendations. And the commanders will listen to our recommendations, listen to the recommendations of the Hostage Rescue Team commander, listen to recommendations from people at headquarters, listen to recommendations from outside experts, and then with all of that information, the commanders make the decision as to what tactics or techniques are going to be used.

The CHAIRMAN. I feel pretty badly they didn't listen to your recommendations. I have to say that I didn't think that tape was worth anything, but I bet you there will be a request for it from a lot of ranchers out there in the Intermountain West.

Mr. SMERICK. Possibly.

The CHAIRMAN. I hadn't realized it would attract coyotes like that.

Senator Simon, we will turn to you. Sorry, Mr. Craddock. I had some questions for you, but I am counting on my colleagues to ask them. Senator Simon.

Senator SIMON. You heard, Mr. Craddock, Mr. Smerick say that David Koresh believed the beast, the Government, was going to get people, part of the end of the world. Does that conform with your impression of the beliefs of the people inside?

Mr. CRADDOCK. I wouldn't exactly describe the beast as being exclusively the U.S. Government, as according to what I understood David Koresh to teach and according to my understanding. The beast, according to my understanding, is humanity in general. It is human flesh. It is human nature. It was human nature which attacked us.

I think one of the problems which I see in certain law enforcement circles is—one of the problems was that there wasn't any local input except for Jack Harwell into resolving the situation. People inside—Jack Harwell knew David Koresh. David Koresh knew Jack Harwell. And so there was the potential for a relationship there because they knew each other.

If I can just bring out a point about the relationship between the negotiator and David Koresh, or those with Steve, Steve Schneider. You have probably had times in your own life where you have had problems, personal problems, whatever, and you wanted to talk to someone about it. You wanted to explain what it is that has upset you. And if you have got someone that you can relate to, someone that understands, someone that has been through a similar experience like we have, David Koresh could relate to us, and we could relate to him because we were searching for the truth type of thing.

And so one of the reasons why I think he wanted to speak with negotiators who had some sort of religious background is so that you could relate to someone. If you have ever had a problem with something, and you have talked to someone about it, got it all out, something that is inside you that has upset you, just the process of being able to talk to someone, explain it out, and someone that understands, you get a feeling of relief. You get a feeling of well-being toward the person you have related it to. You get a feeling of well-being. And this is the reason why I think it would be an advantage for someone with a religious background similar to the experiences which a lot of us grew up in.

But, I think I have digressed a bit from your question, but it is my understanding that the beast just refers to human beings in general, not so much to the U.S. Government. And I don't think in my opinion that David Koresh really had so much hatred toward the U.S. Government; rather, he considered the U.S. Government to be potentially dangerous in certain situations, potentially capable of doing certain things that would harm us and him.

Senator SIMON. We are trying to learn lessons from all of these things so that we don't repeat mistakes. You mentioned two or three times what happened in press conferences being a matter of major concern to those inside. Is one of the lessons that when we have press conferences, we have to be very, very careful about what is said so you do not aggravate a situation rather than move it toward reconciliation?

Mr. CRADDOCK. The concern we had in regard to the press conferences is that the Government was trying to get the minds of the public right so that they could then justify the tactical assault. And we wanted the public to know the real truth. We wanted the public—you know, the one thing that was going to restrict the FBI and Government from doing something like that is public opinion, the way the public sees things. And that was our only safety that we saw. So we wanted the public to know what was going on. We wanted the public to keep negotiations and the tactics aboveboard. And I don't think—there were certain occasions when they weren't aboveboard, and that is what upset people, because we were worried about the reasons for doing that.

Senator SIMON. And when it came to the final climax, did you and others have any warning? Would there have been an attempt on the part of many people to leave immediately if they had known?

Mr. CRADDOCK. I am sorry. Could you restate the question?

Senator SIMON. When the whole thing came to a climax, the tragic climax at the end, did you have any warning that that was about to happen? And would there have been—could you and others have left at that point? Could you describe what the situation was?

Mr. CRADDOCK. I don't know what warning Steve or David had. I don't know what was said during negotiations at those final—the day before the final day. It was on the Sunday of the 18th. But I recall that night, the night of the 18th, Steve coming and saying we are expecting them to do something either in the night or the following morning. So I think it was expected. I don't know that they knew what, but I was told to get my gas mask ready, for one thing. As I said, I don't know—it is like they knew what was going to happen, but I don't know how they knew.

Normally, throughout the siege, if I felt in particular danger, I would often sit or sleep on the floor. Or if I felt comfortable, I slept on a bed. That night I slept on the floor. I tried to keep awake most of that night. I think I was on one occasion summoned upstairs—I think it was that night, at least. They were working on the Seven Seals transcript, and they had a problem with their word processor. The screen had frozen. I went up there to fix that and came down.

But to answer your question further, there was nothing apart from that that I knew of that would warn people. As far as coming out, this is something else I probably need to expand on. To come out, there was either going to be two possible ways. Either the individuals themselves inside would have decided they were going to come out, or David Koresh was going to send them out. And, as I said, the problems we had during the negotiation stage with the tactics that were used kind of—particularly that light stage, I think David Koresh had made up his mind he wasn't going to send people out. So that would end up with the option of other people who might decide to come out. In that, you either had a choice. You could go and talk to Steve or David and say you wanted to come out, which is often the case with a lot of people that left, not talking about the siege but prior to all this happening. They just sneaked away. It was like they were too embarrassed to go and ask David Koresh could they leave.

But, again, because of the tactics that were used, you know, if someone did exit out without being announced, they will get flash-banged. And the response of those that were in the field were quite hostile to people coming out. There was no chance of that happening, which, I think, was a mistake.

Senator SIMON. I thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Van Zandt, in your written testimony, you say: "I was asked * * * to travel to Waco 3 weeks into the situation. I was to be the Bureau's negotiation coordinator, replacing the current coordinator at Waco who was leaving to deliver a speech overseas."

Mr. VAN ZANDT. Yes, sir.

Senator DEWINE. That must have been a pretty important speech.

Mr. VAN ZANDT. That is just what I was told on the phone, that he had a commitment and that he was traveling to do it, and that is why I was being called in.

Senator DEWINE. Continuity, I assume, is important if there is a good relationship between the chief negotiator and—assuming there is a good relationship, between the negotiator and the people they are negotiating with?

Mr. VAN ZANDT. In the prison riots, et cetera, that I have alluded to, I would usually be there at least 18 hours a day, and I would go get as little bit of sleep as I could, just not to be caught up in a sleep deprivation problem. But, I really felt a responsibility to be there either on two shifts, if we were running two shifts, or part of all three shifts, just to maintain that type of continuity you are speaking of.

Senator DEWINE. And, in fact, you were apprehensive about that, were you not in this case?

Mr. VAN ZANDT. Very much so. If I am going to be responsible, I want to be there from day one, and I want to be there until it is over with. And if it is my responsibility, so be it. But I don't want to come in behind the proverbial elephant carrying a shovel.

Senator DEWINE. I was surprised by your testimony in regard to the slaughtering of the jackrabbits audio tape. Is it my understanding from your testimony, that the request for this was not made by the negotiators but was made by the tactical team?

Mr. VAN ZANDT. Yes, and let me clarify that. The request for sounds to be produced that could be played and therefore deprive the Davidians of sleep was made by the tactical team.

Senator DEWINE. And then you also said that that would keep them up and make them more tired, and that if the tactical team was going to be tired, they should be tired, and then maybe they would surrender anyway.

Mr. VAN ZANDT. Those were the reasons that I was given why the request was being made to create that.

Senator DEWINE. But that is from a tactical team. That was not some psychological warfare or psychological thing that the negotiating team said, you know, we are playing good cop/bad cop, now we need to give them some sound, now we will come back and give

them something positive? That is what I always assumed the noise was from, was from the negotiators.

Mr. VAN ZANDT. No.

Senator DEWINE. But, that is not true.

Mr. VAN ZANDT. Well, it could have been used in that manner, that is, if you came to the point where David said, OK, stop that sound and I will start sending people out, then it could have been used just in the manner you suggested.

Senator DEWINE. But your factual statement to this committee is that request came from the tactical side, not from the negotiations side?

Mr. VAN ZANDT. That is correct.

Mr. SMERICK. I think it should also be clarified that, at least, during the 2 weeks that I was in Waco, TX, all of the tactical decisions that were made were based upon recommendations from the tactical side. They were not things that the negotiators had recommended doing, such as turning off the electricity or doing things of that nature.

As I indicated in my memos, we were very concerned about the paranoid nature of the people within that compound, and we believed that those types of actions would do nothing but reinforce the paranoia within that compound and be contrary to good negotiation practices.

Senator DEWINE. Well, I wonder if in light of that, Mr. Van Zandt and Mr. Smerick, if you could describe for me again the chain of command at Waco. This committee has already heard from at least two witnesses who have told us how important it is that the tactical be separated from the negotiations team and that there be another decisionmaker in there who makes the decisions about what to do.

Mr. VAN ZANDT. That took place.

Senator DEWINE. My understanding is that that structure was in place at Waco.

Mr. VAN ZANDT. You know, it goes back to the history of the FBI, and I think this is what Director Freeh is changing. The FBI historically has had a system of fiefdoms. If you were the SAC, you were the Supreme Allied Commander for everything the FBI did in your territory, by and large, no matter what happened. And you could be the most experienced tactician, politician, speaker, you could have every credential in the world, or you could be one of the newer, less experienced FBI SAC's, and it is still your responsibility to resolve the situation in your territory, which left us with, you know, plus or minus 55 SAC's, in a tremendously wide range of experience. I think that is what the FBI has done in the creation of the critical incident response group is say that doesn't work, let's get a cohesive team that we can bring on scene and that will manage a situation like that, and we are not going to worry about this fiefdom concept that we have adhered to since the days of J. Edgar Hoover.

Senator DEWINE. But the decisionmaker in this case was who?

Mr. VAN ZANDT. The decisionmaker was Jeff Jamar, who was the special agent in charge of our San Antonio office, in which, of course, Waco was geographically located. He was the on-scene commander even though he had what the FBI called visiting SAC's.

The Bureau brought in SAC's from other field offices to support him. He was the final decisionmaker at Waco.

Now, he had a chain of command at FBI headquarters, of course, but he was still the final decisionmaker at Waco. Then you had Dick Rogers, who was the head of the hostage rescue team, who in FBI terminology is an ASAC, which makes him just one rank under an SAC. And then you had—

Senator DEWINE. That is the tactical side?

Mr. VAN ZANDT. That is the tactical side. And then you had the negotiators that were represented by people of supervisory rank, which is one rank lower again on the ladder of command.

Senator DEWINE. OK. So at least on paper, the structure is there. You are not running the operation from the negotiation side. You are not running it from the tactical side. You are running it from somebody else who supposedly is getting input from both sides.

Mr. VAN ZANDT. Yes. Structure wasn't a problem. Process was the problem.

Senator DEWINE. OK.

Mr. VAN ZANDT. The process of talking together and sharing and getting on that same sheet of music.

Senator DEWINE. And what are you telling us about the process? Mr. Smerick, you can jump in, too, if you want to. Tell us about that. What is your summary of the process or lack of process?

Mr. VAN ZANDT. Well, again, if I use the analogy of the prison riots that I spoke of before, where we would bring every person together who had something to do with that case at least twice a day to make sure that I understood what tactical was doing, they understood what the negotiators were doing, the on-scene commander, the attorneys, everyone who would be there would be at this meeting, and if you didn't like what I said or if you didn't like the strategy, that is the time to say it and make sure that no matter how many people—and we had hundreds of agents and other people at these prison riots—we all had the marching orders. Everybody understood how we were going to work the next situation, and we moved on from there.

At Waco, I guess in defense of Jeff Jamar—and he has spoken for himself many times—Jeff has said that that just wasn't his style of leadership; that he just didn't like large meetings. He told me basically what he needed to know, he would get from individuals one on one. That was different than any crisis situation I had ever been involved in in the past where we had more of a group think tank and supported that SAC with our different ideas and concepts and philosophies as a group.

Mr. SMERICK. See, along with those lines, Jeff Jamar was at a disadvantage from the standpoint that we all have certain philosophies on how we are going to deal with situations. Jeff Jamar is a no-nonsense type of leader. He is a General Patton type of commander. He gives orders and he expects people to follow them.

You could have another type of SAC who is more conciliatory and will listen to everybody under the sun and yet never be able to make a decision.

So I think Mr. Jamar's belief philosophically was with, damn it, we have a criminal inside that compound, he has killed four ATF

agents, and, by God, we are going to get him to bend to our will and to do what is right.

He did listen to my side of the house. He did listen to the negotiators. But I think deep down inside philosophically his heart was on the side of taking action.

Senator DEWINE. Philosophically, do you believe, if we can take the words from a previous witness today, that he perceived it to be a hostage situation or not with the children?

Mr. SMERICK. Well, the hostages—

Senator DEWINE. I mean, it seems to me that how you define it directly impacts on what you just said and whether or not you could have that mindset in how you were dealing with the situation or not.

Mr. SMERICK. Well, I think the analogy that I can give—and it has been brought out a number of times within the FBI—would be in childraising. Some individuals will insist that the only way to raise a child is through corporal punishment. You spank the child until the child does what you want. If the child continues to misbehave, well, then, you continue to punish the child.

Someone who never spansks a child would always negotiate with that individual in order to get the child to do what you want.

What we need within the FBI are going to be commanders who can put aside their own personal beliefs as far as, say, raising a child or dealing with a criminal, be able to listen to both sides objectively, and then at the same time have an understanding of the mind of the offender. With David Koresh, you are dealing with a person who is equally as strong-willed as the commanders, and David Koresh had the upper hand here because he had the children, which he held as hostages.

Senator DEWINE. Thank you. My time is up. Let me just say it seems to me that I don't know how you could look at this situation without defining it as a hostage situation. I don't see how anybody could look at it any other way. And also, it seems to me, we know enough about hostage situations and situations similar to this that there should be a general protocol, maybe not a protocol how you deal with Branch Davidians. I don't mean that. But once you define it as a hostage situation, there should not be as much variation as your testimony would lead me to believe that there might have been in the past about the personality of the commander on the scene determining how you deal with a situation.

I just think we have too much evidence and there has been too much written and we have had too many tragic examples of what does not work, and we have seen other examples, as you have testified, as far as what works that there should be a protocol and that the person on the scene certainly has leeway, certainly has flexibility, but to infer as you have—and I am not questioning that you are not correct—that the personality structure of the person who is in command is going to determine what you do I find appalling.

Mr. SMERICK. I don't think it is appalling, Senator. I think it is human nature. You can have the most liberal Senator on one side of the house, the most conservative Republican on the other, debating the same issue, and the personality traits of both are going to be so strong neither one is going to be able to really relate to the

other person. And personality does play a big role in these situations.

Senator DEWINE. Oh, I don't question that personality plays a big role. I am only saying that I wouldn't infer from your testimony—and I assume this has been changed now. We will hear from the Director later, but I assume this has been changed. But the way you describe the situation at Waco, if we had had a different commander in there—you know, 10 commanders, you might have 10 different ways of approaching it. I don't mean decisions on basic facts. I mean ways of approaching it. It seems to me we know too much about that type situation to accept that, and I guess you and I just disagree about that. I just think there should be a protocol and a basic standard operating procedure and deviate within that based upon the facts as the facts change. But there are certain things that I think we know.

Thank you.

Mr. SMERICK. The only historical comment that I can make in reference to your statement would be World War II with Gen. Dwight D. Eisenhower as the Allied commander and Gen. George Patton as, I think, the 3d Army general. If they had reversed roles, I don't know if General Patton with his type of personality could have been able to bring together all the diverse elements within the Allied structure. So personality does play an awful big role, regardless of the training that you give to individuals. Personality is so important.

Senator DEWINE. That is why Ike was in charge and not Patton.

The CHAIRMAN. Well, that is his point.

Mr. SMERICK. That is my point.

Senator DEWINE. Yes, but I mean, we shouldn't allow that personality structure, though, of one person to dominate.

The CHAIRMAN. Well, on the other hand, without Patton, they wouldn't have ended the war as quickly as they did.

Mr. SMERICK. Exactly.

The CHAIRMAN. Like you are saying, it is using the right person at the right time and trying to bring things together as best you can. I have to admit there is good need for both types of personalities. It is just that we really need to have a greater set of guidelines at the top so that people know that within which they have to stay.

Senator Feinstein, we will turn to you.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Mr. Craddock, I wanted to ask you a few questions, if I might. On the day of the gas insertion, you went outside to get the phone that had been thrown out of the building. Is that right?

Mr. CRADDOCK. That is what they told me to go out and get, yes.

Senator FEINSTEIN. Who told you to go out and get the phone?

Mr. CRADDOCK. Well, initially it came from Byron Sage, who was doing the announcing over the loudspeakers, for someone to come out. I normally was in charge of looking after the phone system. Because of various personal reasons, I didn't get up early enough when the initial call was to come out, for someone to come out and collect the phone. I wasn't up near the foyer area where the phone was kept to know what was going on. I was back further in the building.

Senator FEINSTEIN. Why was the line cut and the phone thrown out?

Mr. CRADDOCK. Well, OK. I have a question myself why was the phone line cut. We did not cut the phone line.

Senator FEINSTEIN. To your knowledge, no one cut the phone line on your side?

Mr. CRADDOCK. No, definitely not. Let me explain what happened, what I saw.

It was approximately, I think, 9:35 a.m. when I finally got up to the foyer area. What I saw in the foyer area was the doors, the front doors, both front doors had been pushed in. Not only the front doors, but the door frame and part of the wall itself was pushed in together. The phone that we had in operation which I set up some weeks before, I can tell you, I think it was a black Panasonic answering machine phone with twin microcassettes. I was well familiar with it. It was sitting—if you are facing the building, to the left of the front door, it was probably about 6 feet in. And it had not been touched or harmed as they pushed the doors in. It was still to the left of the doors.

OK. On the other side of the doors is where the phone line came in. It came in through the window. It was connected to a little box; I think they called it an RJ-11 block. And I ran an extension cord from that block through—from one side of the door to the other side on to that phone. And when I got there that morning, that phone was still there.

Senator FEINSTEIN. It was dead? Is that what you said, the phone was dead?

Mr. CRADDOCK. It was still there.

Senator FEINSTEIN. Oh, it was still there. Thank you.

Mr. CRADDOCK. It was still in its original position. It hadn't been moved. I didn't know what the cause of the problem was. I didn't know whether someone had thrown something else, but I knew the phone hadn't been thrown out. As far as the problem with the—we did not have a shortage of phones. We had four phones in all working order. So if one was thrown out, we still had three others.

I asked one of the other guys what the problem was. One of the guys, I think, who answered the phone at 6 a.m., when Byron called in in the first place, said they had run over the phone at 6 a.m. They were the ones who had caused the break of the line by running over it.

I didn't know whether Pablo was telling me what he knew or what he thought happened. I looked at the extension line which connected the phone to that RJ-11 block. I saw it passed under the wall. Now, the wall, the bottom of the wall, what I call the toe plate, had been pushed in and the phone line was underneath it. The wall was resting on top of the phone. I figured it may have been broken under the wall. So I wanted to take one of the spare phones and connect it directly into that RJ-11 block, which the outside line was directly connected to. So I took off my jacket and my gas mask, you know, walked in so they could plainly see me. I think there might have been a Bradley vehicle out front. You had the house next door which I assumed the observers could see me. I don't know what other positions the observers would have been able to see me. And I just waved my arms around to show them

I wasn't armed. I picked up the handset of the black phone, which was the phone we normally had in use, put it to my ear, it was dead. OK. So I put it back down. I picked up a spare phone. We had two spare phones near that phone.

Senator FEINSTEIN. You are outside of the house now?

Mr. CRADDOCK. No, no.

Senator FEINSTEIN. You are inside?

Mr. CRADDOCK. I am still inside.

Senator FEINSTEIN. I want you to get to the outside part.

Mr. CRADDOCK. I am about 6 feet within the building. I pick up the spare phone. It is a white phone with the buttons on the handset. It is a Sony, I think. I then take this phone to the other side of the doors. I plug it into the RJ-11 block. The phone is dead. So I am certain that the problem has to be somewhere outside.

We had had various problems with the phone line. Only of the problems we had previously was it looked like an animal or something, possibly a dog, may have been chewing on the line. It had caused the failure of the line then. So I figured maybe that was the problem. I didn't want to assume that they had run over the phone line without exploring other possibilities. So the only way to test what was wrong with the phone line I thought was to go out. So I went outside—realizing, of course, you know, I am hearing these instructions from Byron to come out and collect the phone, which I knew wasn't out there—or, rather, let me—I should state we did have two spare phones, and I picked up one of them. I don't recall whether the other spare phone was there or not. It may have been. It may not have been. I wasn't around at 6 o'clock when Steve supposedly threw something out. But when I got outside, I did not see a telephone outside. I examined the line. I couldn't see initially any fault with the line.

Senator FEINSTEIN. But my point is that the line is disconnected, so there could be no negotiations. Is that right?

Mr. CRADDOCK. Yes.

Senator FEINSTEIN. And you don't know who did it. Were you supposed to give a signal to the FBI if you wanted to renegotiate or to continue negotiations?

Mr. CRADDOCK. Well, I wasn't the one trying to do the negotiations. I was just trying to find—connect the line. Steve had told me we had to talk to them. OK? Nobody told me why. I didn't know that I had to give some sort of signal.

Senator FEINSTEIN. And how long before the gassing was that?

Mr. CRADDOCK. This was during the gassing.

Senator FEINSTEIN. It was during the gassing.

Mr. CRADDOCK. It was the day they stopped.

Senator FEINSTEIN. OK. And when did you run out with a grenade in your hand?

Mr. CRADDOCK. I didn't run out with a grenade in my hand. I had it in my pocket. It was during the fire. I was forced out by the fire, and I went to the cinderblock building. It was the only safe place I thought I could go, and I took everything off me. I left it there, and I waited until the fire had died down until I felt it was safe enough for me to come out. And when I did so, you know—I knew there was a grenade in there, and I told them about the grenade being in there.

Senator FEINSTEIN. You told them about the grenade being—
Mr. CRADDOCK. Yes.

Senator FEINSTEIN [continuing]. In your pocket?

Mr. CRADDOCK. I didn't tell them it was in my pocket. I said it was in the shelter there.

Senator FEINSTEIN. What did you intend to do with the grenade?

Mr. CRADDOCK. Let me try to explain something to you first. I had no desire to have a grenade. I think I have made statements in the grand jury that I was given this grenade. I went upstairs early that morning to find out what was going on, what we were supposed to do. I had no thought of going up there or a grenade. I didn't know—if I knew there was going to be a grenade, there was no way I would have gone up there. I went up there to find out from David Koresh what was going on. When I got up there, it was a darkened hallway. I approached the situation, and I saw he had a grenade in his hand. He looked at me and says, Do you know how to use one of these? And the only thing I said was yes. The reason why I said yes was I wanted to get the hell out of there as fast as I could.

When you are being given this thing, the thoughts that went through my mind was an expectation that he was thinking that they were going to come in on us and there was going to be a bloody battle. And I did not want to partake of such a thing, but I didn't want to get into an argument with him at that time. So the only way I could get away from him is to simply say yes and get out of there. That was the only thing I could do, realizing, of course, what you have been through, you have been through night after night of this music, you are tired, you are exhausted, physically, mentally, psychologically exhausted. You just want to get away.

Senator FEINSTEIN. I understand. So you put the grenade in your pocket?

Mr. CRADDOCK. And I went back downstairs.

Senator FEINSTEIN. And you—

Mr. CRADDOCK. But I took it out and left it on the floor. But when they started coming into the building, what am I going to do? Leave it there, it gets run over, goes off? Suppose it injures someone? I had to put it back in my pocket.

Comes the fire, you know, I remember the grenade in my pocket. But if I just put it down somewhere, suppose the fire gets it? Suppose someone is trying to get away from the fire and it goes off? I would be responsible.

Senator FEINSTEIN. Can I ask you one other quick question? Because my time has expired. My understanding is on the subject of the milk, you mentioned the mothers who were nursing their children and the call for milk, my understanding is that the FBI says the exact opposite about the milk, that they sent in milk but they got no youngsters out in return.

Mr. CRADDOCK. I am not familiar with exact details of what you are saying. I just remember what I can remember. Initially, the negotiation for milk was for one child, and they sent that child out. And then they came back and said, well—we kept asking for milk. Well, send out four children, we will send you milk.

Senator FEINSTEIN. Maybe I can ask you about that.

Mr. VAN ZANDT. Yes, thank you, Senator. I was there, and I helped arrange the delivery of the milk at the time. And maybe this was new to you, too. What it basically was, there was a number of reasons why the Bureau wanted to get various types of containers into the compound. But one of the things we wanted to do, too, was to get milk to the children. From the negotiators' point of view, we wanted to do everything we could, No. 1, to support the life of the children and, No. 2, show that we cared. I am a parent. Most of the other negotiators were parents. We wanted to make that point.

What I was able to accomplish as the coordinator is I had the Bureau obtain approximately 25 pints, single-pint containers of milk because we wanted to personalize it. We wanted each child to have something, and we had those 25 individual pints placed in a cardboard container and carried out in front of the compound, and then one of the members of the Davidians came out, picked up that cardboard carton with the 25 cartons of milk, and took it back in at the time. But we——

Senator FEINSTEIN. Did you bug the milk?

Mr. VAN ZANDT. Excuse me?

Senator FEINSTEIN. Did you bug the milk?

Mr. VAN ZANDT. The milk itself, no. The milk wasn't bugged.

Senator FEINSTEIN. The containers.

Mr. VAN ZANDT. I, I——

Senator FEINSTEIN. It seems to me the answer is "yes" or "no."

Mr. VAN ZANDT. I think it was reported in the media that the container in which—that the carton or whatever had some type of bug in it. I believe that was reported. I don't—I am not at liberty to answer that, I really don't feel, so——

Senator FEINSTEIN. Are you saying you don't know?

Mr. VAN ZANDT. I am saying that the container was bugged.

Senator FEINSTEIN. Thank you very much. I appreciate that.

Mr. CRADDOCK, one quick last question. Please answer it honestly or decline to answer it. Did you know that David Koresh was sexually molesting young girls?

Mr. CRADDOCK. Definitely not.

Senator FEINSTEIN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feinstein.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Either Mr. Van Zandt or Mr. Smerick—and I think it was Mr. Smerick in response to a question that Senator DeWine asked—said that David Koresh was holding the children as hostages. Did you mean that in the sense that he might hurt them or, rather, that he was holding them in order to prevent someone else from hurting them?

Mr. SMERICK. I looked at that situation from the standpoint that the children that David Koresh allowed to leave that compound were not his biological children. The children that were inside that compound were his.

One of my concerns with this whole situation is that I believed that David Koresh could have been convinced to come out of that compound to face the charges of shooting ATF agents and perhaps had a defense for that. But the reason he could not come out of

that compound was the fact of these biological children, many of them whose mothers were under age when they gave birth. He probably felt he would have been charged with statutory rape of these young women and through DNA testing it was going to be able to be shown that he was the father of these kids. And so, yes, as far as holding them hostage, absolutely. And in the final analysis, this is why I believe that the negotiators probably would have been successful in getting more people out of the compound, but as far as getting David Koresh and his hard-core followers out, I think it would have been almost impossible because he knew he was not going to prison as a religious figure or a religious martyr, but as a child abuser and someone who has had sex with 9-, 10-, and 11-year-old girls.

Mr. VAN ZANDT. And he had made the statement to one of our negotiators that he wasn't going to come out and go to prison and get Bubba as a cellmate, knowing what Bubba would do, and the inference was someone who had relations with children.

Senator KYL. OK. But the word "hostages" I think has a technical meaning, and what I am trying to get at here is whether the FBI believed that the children in effect were being used as a shield against FBI and BATF action or as a possible object of his violence. What I hear you saying is that it is neither of those circumstances; it is just that he wasn't going to come out under any circumstances and didn't want his biological children out there creating evidence against him. Is that a more accurate statement?

Mr. SMERICK. I believe that is the way I have looked at the situation.

Senator KYL. Mr. Van Zandt, do you have a different view?

Mr. VAN ZANDT. I think that David Koresh realized the value of having the children in there and the shield effect, to use your term, the shield effect those children would have. I think just by implication the idea of children inside—and you know, we are talking—whether they are hostages or not, if I have my young children, they really don't have the will to say, Dad, I want to get out of this place, I am leaving. They stay because I am the parent and if I want them to go, I would tell them to go. So, I mean, we can get caught up in the semantics of it, but I don't believe those young children either had the ability to make a decision to leave or the right as a member to make that decision.

Senator KYL. I think everyone would agree with that, but I think semantics are important in view of the decision to go ahead with the move on the compound, because it is at that point that U.S. Government authorities knew or should have known that there was a likelihood of harm coming to these children. Am I not correct in that?

Mr. SMERICK. I was not personally involved in the decision to use or not use gas, and I don't know if Mr. Van Zandt was involved in that decisionmaking either.

Senator KYL. It is not just the gas. I mean, given that one of the key principles in hostage situations is to use every effort to avoid harm to the hostage, and that clearly was violated in this case with tragic results, I think it is important how our Government viewed those children. Maybe neither of you can comment on that, but it does seem to me that that is an element of a fairly consistent ap-

proach to these problems that was not followed in this case, and therefore relevant to this committee's oversight of the activity of the agencies involved.

Mr. VAN ZANDT. I think anyone would have to consider that the children were potential victims in any type of tactical situation. As Mr. Bolz referred to, historically we know there are a large number of hostages that are injured when we have tactical rescue efforts to go back in.

You know, hindsight is 20-20, and if I had the benefit of 20-20 hindsight instead of just feeling bad and instead of just enunciating to the powers that be at Waco that I don't think this is going to work—we have never used gas in this big a building; we have got a 25-mile-an-hour wind, this is not going to work—if I had the benefit of life all over again, I would get on the fastest plane I could and fly back to Washington and go see Bill Sessions, who was the Director, and say this is crazy and this is not going to work.

But I am not a tactician and all I had was what I felt, not a professional ability to make that type of decision.

Senator KYL. Jeff Jamar had a superior where, in Washington? Was his immediate superior in Washington?

Mr. VAN ZANDT. Probably Larry Potts, I guess, was the next in the chain of command.

Mr. SMERICK. Mike Kahoe, perhaps, at the section chief, Violent Crimes Section chief.

Mr. VAN ZANDT. Where Larry was the Assistant Director. I think he would probably report to an AD.

Mr. SMERICK. I don't know the exact pecking order as to who he actually responded to. There was a Violent Crimes Section chief, a Deputy Assistant Director, then the Assistant Director, and I am not sure which one of those gentlemen he would have dealt with directly.

Senator KYL. So there were about maybe three between he and the Attorney General, roughly?

Mr. SMERICK. At least one at headquarters.

Senator KYL. Mr. Van Zandt, in your witness interview with the FBI, you said that in view of the philosophy of the Branch Davidians and the initial shootout, you thought it unlikely, even if your suggested negotiation strategy had been fully implemented, that the outcome would have been any different. Is that correct?

Mr. VAN ZANDT. I can't say that it would have been any different. I would have liked to have tried.

Senator KYL. I think this is a direct quotation from a different portion of the interview: "Koresh will not come out under any conditions other than his own. It is hard to believe that Koresh will come out voluntarily, abdicating his godhood for limited notoriety and time behind bars."

Are those your words?

Mr. VAN ZANDT. Yes. In fact, that is part of a nine-page assessment that I wrote concerning Koresh in which we suggested that one of the things that will happen will be the destruction of the compound by fire and explosion.

Senator KYL. Well, in view of that statement, what would lead you to believe that the result could be any different? You said you would have preferred that your approach to negotiations play out.

Mr. VAN ZANDT. I guess it is how far back you let me turn the clock. If you let me turn the clock back prior to the ATF assault, what I would want to see done is for Jack Harwell to call David Koresh and say, David, myself and an ATF or an FBI agent need to talk to you, and we would have driven out, we would have sat on the front porch with David, we would have had a glass of tea out of a mason jar and explained to him, David, these are the allegations we have about these weapons. Now, we need your help to work this.

And as far as I am concerned, worst-case scenario, if David Koresh told me to go to hell right at that point, at least we would have tried. We would have tried.

Senator KYL. And you still had plenty of opportunity thereafter under much better circumstances to keep on trying with time on your side.

Mr. VAN ZANDT. Yes.

Senator KYL. But that isn't the condition that was presented to you, and when you showed up in effect and evaluated this situation, your evaluation was that, in view of the prior circumstances, there was no way to bring him out of there voluntarily.

Mr. VAN ZANDT. My evaluation was at that time our train has been past so many stations where we could have done something and we kept on going past that station, we ran over that station, that at the time I wrote this assessment, which was on April 10, I felt that is what we were up against unless something drastically, drastically changed; that is, one of the suggestions we had was what Pete referred to, worst-case scenario: Let's put barbed wire around that place, let's back off, let's bring the Marshals or somebody in, and set that place up as a prison.

Now, the flip side of that—because I talked to Jeff Jamar and he said, well, what's the flip side? And I said the flip side is that 4 months from now David Koresh is going to stand up in a window and he is going to hold this little—he is going to hold this little emaciated baby up in front of the window and say, See, FBI, this baby is dying, and if you don't give us what we want, this baby is going to die; now we will leave it up to you. And I think that is what we would have continued to face from David.

Mr. SMERICK. And if he didn't do that, my concern as a profiler was he had a video camera within that compound, and there was nothing to prevent him from sitting there in front of the camera with two young girls on his lap, 8 or 9 years old, and announce to the FBI and the world that God has decreed that I can have sex with these two young women. Then where were we as the FBI?

Initially, my thought, along with Mark Young's, was, yes, let's turn this into a prison camp and we will save the taxpayers a lot of expense as far as a trial goes. We have the verdict in and a sentence. But by the same token, if he would have threatened to abuse other children, I think we would have been obligated to do something as an agency. I don't think the American people would have allowed us to sit still and allow this travesty to occur. And with David's philosophy of wanting to have the end come at some particular point, I believe we would have been provoked into doing something. And I agree with Mr. Van Zandt. The final outcome was going to be the same.

One of the things I found very interesting was a conversation I had with one of David Koresh's wives, and this was during the second week of the standoff at Waco, Texas. And she said that she had received a telephone call from him the day before ATF conducted the raid. And he said, you know, we are famous now. Have you read the newspaper? And apparently it was the day before when the Waco Tribune had run the article on the sinful messiah. And so he was very pleased that now we are famous, we are going to get a lot of attention, and he said, it is time for you to come back into the compound because this may be your last chance to be with us for the final days.

And so in his mind, he already was preparing for some sort of an onslaught. Whether it was going to be ATF, the Sheriff's department, the FBI—he knew something was going to happen because, doggone it, he made deliberate attempts to draw law enforcement into a situation. He was gathering large sums of arms and ammunition. He was making no disguise as far as changing these weapons into automatic weapons. And he knew sooner or later this would draw somebody out to that particular compound.

He has his elderly women within the compound making vests so that cartridge cases could be carried. He was pouring concrete in between the 2-by-4 studding. All of this was designed for his fortress when the final assault was going to occur.

As I indicated in one other meeting, when ATF showed up at that particular scene, David Koresh had the option of firing warning shots into the air. He had the option of allowing ATF to search his premises for automatic weapons. He had the option of bellowing out a command: Don't come any closer or we are firing. He chose none of those particular events. Instead, he allowed ATF agents to come out of those particular vehicles, and then a fire fight began.

I think what David Koresh anticipated was that he and his followers were going to die in that particular confrontation. When that did not occur, now all of a sudden he is in a situation that he has never been in before in his life. Here we have a frustrated minister, an individual who has been trying to get his message out to the American people and to the world for years without any success. All he was able to recruit from the entire world was perhaps 100 people to join him in his religious beliefs.

Now, after this raid goes down, all of a sudden he is a media celebrity around the world. He is on the cover of Newsweek, Time Magazine; CNN wants an interview. In fact, on many occasions he asked the FBI for documentation. He wanted newspapers, he wanted magazines, because for the first time in his life he was able to get his message of his religious beliefs out to the world. And if I were David Koresh and I knew these were my options—I can stay in here and still communicate my religious beliefs, or come out and go to prison as a child molester—to me, the answer is rather simple: I am going to stay put.

And so even though David Koresh, time and time again, promised the FBI that he was coming out after certain events occurred, I considered these to be delaying tactics. And in the last episode when he was going to be writing his Seven Seals; yes, he would complete the Seven Seals, but I am convinced God would have

given him another reason, another excuse for staying in there a while longer.

I still believe that the FBI had inherited a situation in which, regardless of how much we tried to negotiate, no matter how many behavioral science techniques that we would use, David Koresh was the man who was in the ultimate position of controlling his own destiny. And in the final analysis, he did exactly that.

Mr. VAN ZANDT. And when you talk about a hostage, I think the hostage was the Federal Government at the time. I think the FBI was hostage because we were damned if we did, and we were damned if we didn't in that particular situation. And David was pulling the strings like a master puppeteer and, unfortunately, we just flailed our arms as he pulled the strings. And we were caught up in that as much as the Davidians were inside.

The CHAIRMAN. Senator Leahy.

Senator KYL. Mr. Chairman, may I just make a final comment, though?

The CHAIRMAN. Sure.

Senator KYL. I appreciate all of those insights. It just seems to me that our committee's role is to try, in whatever way we can, to ensure that the United States Government either is not in a position, to or does not in the end become the method by which the self-fulfilling prophecy of someone like this is, in fact, executed. That is a position that the Government just cannot get itself into and why we have got to figure out ways to confront these situations in some way that will result in a different outcome. And I am sure we all agree on that. But I appreciate your insights.

Thank you, Mr. Chairman.

Mr. BROWN. Excuse me, Senator Hatch. If I may, I know I am not here as a witness, but if I can interject two very, I think, significant mischaracterizations of facts by Mr. Smerick. One is that the ATF was not invited out. That is clearly not true. Mr. Aguilera, I think, has testified in front of the House committee on this already. He was clearly invited out some 6 to 8 months prior to the tactical raid that took place on February 28. He declined the invitation. That is clearly a fact. It is well established.

I think another fact that was clearly established at trial is that David Koresh came to the front door when the ATF exited their vehicles and said: Can't we talk about this? There're women and children in here.

Mr. Smerick did not mention that fact. He did offer that alternative, also. And ultimately, I think the fear that you have suggested, Senator, did exist in this case, and that is that the ATF never planned anything but a dynamic entry raid. And I know that is not the purpose of this hearing, and I hate to digress on that. But the facts ought to be—the facts ought to be clear that that is exactly what happened in that they did become the vehicle for any self-fulfilling prophecy and that they chose not to exercise other alternatives which were clearly available, going out at invitation, taking Sheriff Harwell, or planning knock-and-announce.

The CHAIRMAN. Did you have any comment about that?

Mr. SMERICK. No.

The CHAIRMAN. I think that has come out pretty much in the hearing.

Senator Leahy.

Senator LEAHY. Mr. Chairman, obviously one of our oversight questions of how the FBI responds with changes in their own procedures as a result of Waco. You have said you have an open mind on the question of the continuation of the ATF. I struggle to keep an open mind on that issue, but that will probably be an issue addressed at another hearing.

I have stated in other fora my real concerns about ATF, which sometimes can be more concerned about where the TV cameras are and what their image is than what the results are. But we will get into that another time.

Mr. Craddock, you spoke earlier about King David in the Bible with his 700 wives and so on, and you spoke of David Koresh as having these young children and multiple wives. Frankly, Mr. Craddock, that is not a Biblical thing. Most people would call that pedophilia. They would call it child abuse. Every State in this country has laws against pedophilia. That is not some Biblical thing. He was abusing children. Do you agree?

Mr. CRADDOCK. Sir, it is easy to make accusations and pass judgments upon a person who is not alive to be able to defend themselves. I never molested any children.

Senator LEAHY. You have heard the testimony, have you not, sworn testimony before the House of Representatives of a child being required to have sex with Mr. Koresh even before she had reached puberty? You don't call that child molestation?

Mr. CRADDOCK. Yes, I would. I would agree. I don't support that. I have doubts about its truth because it wasn't according to what I understood him to do.

Senator LEAHY. You understood simply that he was following some Biblical injunction to have a whole lot of wives?

Mr. CRADDOCK. That is the limit of it, yes.

Senator LEAHY. And you don't know what the ages of those so-called wives were?

Mr. CRADDOCK. No.

Senator LEAHY. That determination would be made by Mr. Koresh, and if he determined to call one of these wives, justifying it by divine instruction, and the girl turned out to be a 9-year-old, a 10-year-old, or 11-year-old, would you call that not divine instruction but pedophilia?

Mr. CRADDOCK. I would call that pedophilia.

Senator LEAHY. Thank you.

Do you agree from your knowledge that Mr. Koresh was a sadist?

Mr. CRADDOCK. No.

Senator LEAHY. Do you believe that Koresh was the messiah?

Mr. CRADDOCK. I don't believe I can answer that with a simple yes or no.

Senator LEAHY. You believe what?

Mr. CRADDOCK. I don't believe I can answer that with a simple yes or no.

Senator LEAHY. Do you think he was?

Mr. CRADDOCK. I think he was a messiah.

Senator LEAHY. On the last day of the standoff, why did the Branch Davidians start fires in the compound?

Mr. CRADDOCK. I cannot answer you that. I don't know for a fact how the fire got started. I cannot testify to things I did not see or know.

Senator LEAHY. You did not see any fires started?

Mr. CRADDOCK. I did not.

Senator LEAHY. You know, of course, that there were fires, obviously, but——

Mr. CRADDOCK. Obviously there was a fire.

Senator LEAHY. But you don't know how they started?

Mr. CRADDOCK. No.

Senator LEAHY. Had you seen any preparation before for fires?

Mr. CRADDOCK. Sir——

Mr. BROWN. I am going to ask him not to answer this question.

Senator LEAHY. Well, Mr. Craddock, that is fine. You can listen to your attorney. I will restate the question. You are here under oath, and if you don't want to answer, I will consider that. You have not taken the fifth amendment in your testimony. If you refuse to answer, I will take that in my own mind in judging your testimony. I will take it in my own mind whether the questions you have answered have been questions that you want to answer to support your position and only your position and refuse to answer questions that may detract from that position. I will ask the question again.

Did you see any evidence of preparation of fires—preparation that might be done to prepare to set fires?

Mr. BROWN. And I will again instruct him not to answer the question.

Senator LEAHY. OK.

Mr. BROWN. It is my understanding that we were here voluntarily under the—to discuss the negotiations and the tactics that went on during the 51-day siege, Senator. And it is my expectation that that is what the questioning should be directed toward.

Senator LEAHY. Well, I have no understanding of what your expectations might or might not be. I am here to ask questions. Obviously, if you refuse to answer them, you can refuse to answer them. But, quite frankly, it sounds to me like your client is willing to answer questions that might allow in most instances answers that would be self-serving and supportive of his and the Branch Davidians' position and does not want to answer questions that may actually bring us to the facts.

Mr. BROWN. I don't think that is a fair characterization. Furthermore——

Senator LEAHY. That is my interpretation. Let me ask this question, and obviously you can add any statement you want afterward. Mr. Craddock, you kept referring to David Koresh sending people out. Did you feel that you could leave without David Koresh's permission?

Mr. CRADDOCK. Yes, if I asked him—if I had said I wanted to——

Senator LEAHY. Could you just get up and walk out, don't ask him, don't do anything, just walk out?

Mr. CRADDOCK. Just walk out?

Senator LEAHY. Yes.

Mr. CRADDOCK. Without telling anyone?

Senator LEAHY. Yes.

Mr. CRADDOCK. I would be flash-banged.

Senator LEAHY. You would be what?

Mr. CRADDOCK. Flash-banged. They throw these—they are like grenades. They explode with a bang, a loud bang and a bright light, flash of light.

Senator LEAHY. I understand what a flash-bang grenade is. In other words, you could not leave without getting somebody's permission?

Mr. CRADDOCK. I would have to contact one of these negotiators first. That was the——

Senator LEAHY. Are you saying you couldn't just open the door, put your hands up, and just walk out?

Mr. CRADDOCK. Yes.

Senator LEAHY. OK.

Mr. CRADDOCK. That was definitely the case.

Senator LEAHY. Do you know if anybody asked Mr. Koresh's permission to leave?

Mr. CRADDOCK. I know of no one.

Senator LEAHY. Now, you said you had no desire for a grenade, that you took it to get out of there without arguing with David Koresh, as I recall your testimony a few minutes ago.

Mr. CRADDOCK. That is correct.

Senator LEAHY. I find that a little bit hard to believe, frankly. It sounds somewhat self-serving. You said at your sentencing: "I wish to talk about myself. I hate guns. I hate any firearm. That is just my nature."

Yet before the raid by BATF on February 28, 1993, you armed yourself with an AR-15 assault rifle and a handgun, a vest containing eight 30-round magazines filled with ammunition, a pretty heavy load if there was one. So you are a man who hates guns, hates any firearms, had no desire for a grenade and so on, but you armed yourself with an AR-15 assault rifle, a handgun, a vest containing eight 30-round magazines filled with ammunition. Any inconsistency there, Mr. Craddock?

Mr. CRADDOCK. I could be armed to the hilt. I had no intentions of firing on anyone. The fact that I had arms does not, that I believe, endanger anyone else except in their minds they might see me being armed and think I am dangerous. I didn't think it was wrong to defend—you know, I didn't think by picking up an arm it was going to hurt someone.

Senator LEAHY. Well, Mr. Craddock, let's put this in context. Unlike you, I don't hate guns. I happen to like guns. But I can't quite conceive of myself walking around carrying eight 30-round magazines unless I was trying out somehow for a Rambo movie. The fact is that you had armed yourself like that. The fact is you did have a grenade, and you say that you hate guns and so on. I mean, what were you going to do with it?

Mr. CRADDOCK. Let me try to explain to you something about——

Senator LEAHY. In fact, you were convicted by a jury after a trial for possessing the grenade, too.

Mr. CRADDOCK. Yes, I was.

Senator LEAHY. Yes.

Mr. CRADDOCK. Let me try to explain something to you. We use the Bible to understand how we should live. We use the Bible to

justify things we do. In the days of Christ before they took him to be crucified, he spoke to his disciples, reminded them of a time when he sent 70 of his disciples out to do all his miracles. He told them and he reminded them on this occasion that when he sent them out, they were to take nothing with them, not a purse, nothing. And he asked him on this occasion when he was with his disciples, he was in the upper room during the Passover, and he said to them, Did you lack anything? And they said no. Then he turned to them and said, Now I say to you, those of you who don't have a sword, take your purse and buy one. Those of you who don't have a purse, sell your cloak.

Senator LEAHY. So you are carrying the guns because of divine instructions? We are told that Mr. Koresh at one point was planning to surrender and to be carried out of the compound on a stretcher by Branch Davidians who would then use guns under their coats to engage the FBI in a gun battle. Were you aware of that?

Mr. CRADDOCK. That was not what I was told at the time.

Senator LEAHY. What were you told?

Mr. CRADDOCK. I was told that when we were to exit from the compound, certain guys would be armed; if there were any trouble, if we were fired upon, that was the condition, then we were to defend ourselves. That is what I heard, and I know there has been different stories of other people who said differently. But I can only testify what I heard.

Senator LEAHY. Are you saying you don't think there could have been a negotiated surrender where you would not be fired upon if unarmed people came out?

Mr. CRADDOCK. I think there could have been. But at that time I—

Senator LEAHY. Apparently some others did not share your thoughts. Is that correct?

Mr. CRADDOCK. Yes. I think at that time there was—people were very scared, and maybe it was paranoia, but what have you. But what I believed is that there was a very real chance that they could decide to shoot us, because our—I will say my feelings, the way I thought that they—of their feelings towards us was one of revenge, ones of hatred.

Senator LEAHY. Revenge for what, Mr. Craddock?

Mr. CRADDOCK. What occurred on the 28th.

Senator LEAHY. And was that an ambush of the BATF?

Mr. CRADDOCK. No.

Senator LEAHY. Who fired first?

Mr. CRADDOCK. Let me put it to you this way: I was not at the front door to see what happened.

Senator LEAHY. Who do you understand fired first?

Mr. CRADDOCK. Based upon what I was told by others in the compound, they fired first. And I firmly believe that. I still—

The CHAIRMAN. Senator, if you would yield, I did indicate to Mr. Craddock, we did indicate that we were interested mainly in the policy matters when we invited him to come. You know, I think your questions are really good.

Senator LEAHY. You just don't want them answered.

The CHAIRMAN. No. I would like them answered. [Laughter.]

I just want to honor our commitment, because these hearings are not——

Senator LEAHY. I understand that, Mr. Chairman, but I just don't think it should be.

The CHAIRMAN. Sure.

Senator LEAHY. When we were doing the Ruby Ridge hearings, we had some witnesses we would have liked to have talked with, but they took the fifth and I understand that. That means they don't answer any questions, so we don't ask any questions. I do find it a little bit difficult, though—and I do find the opening a very self-serving statement when somebody is able to answer some questions but not others, but I understand. I also understand he is on appeal from his conviction for carrying a grenade.

The CHAIRMAN. I think that is why we did it, we agreed to this, because he is on appeal, and we just want to be totally fair. And what we are interested in more than anything else in these hearings is what can we do to avoid these types of problems in the future. We felt it was important to have somebody who was within the compound for all 51 days.

Mr. Craddock, you were born and raised in Australia, right?

Mr. CRADDOCK. That is correct.

The CHAIRMAN. You are a college graduate?

Mr. CRADDOCK. That is correct.

The CHAIRMAN. You also got a degree in engineering.

Mr. CRADDOCK. That is correct.

The CHAIRMAN. And you were a schoolteacher?

Mr. CRADDOCK. That is correct.

The CHAIRMAN. I see. Well, we appreciate having all of you testify. I think it has been very——

Mr. VAN ZANDT. Senator, may I clarify one thing for Senator Feinstein?

The CHAIRMAN. Sure.

Mr. VAN ZANDT. Just one quick point. One thing I didn't want to leave with, when we talked about what happened at the very ends, two points. No. 1, we had 754 separate individual conversations with Branch Davidians, 754 times the negotiators talked to them and asked them to come out in some way, shape, or form, and they didn't do it.

No. 2, on the last day, when Byron Sage made the announcement that they should come out, I was back with the negotiators. Byron was up forward. I was back in the negotiations room. And the first thing I heard was that they have cut the phone and the phone has been thrown out the door.

I had our negotiators in the negotiation room for the next 2 to 3 hours keep the phone ringing on the off chance that wasn't true and on the off chance they had a backup phone or anything else they would do to ensure that we were trying to make that contact, and at the same time ask one of our negotiators who was forward to use a loudspeaker and tell the Davidians, all right, if you can't use the phone, listen to our voice. This is up to and including the time the fires started. Listen to our voice; if you can't see us, move toward the voice.

Our whole premise was all you have to do is walk out of the building and walk toward the loudspeaker and you will be safe.

And we continued that, both telephone attempts and by loud-speaker, up to and including the time the building was set on fire and burned down. Our efforts didn't stop.

Senator LEAHY. Mr. Chairman.

Senator FEINSTEIN. May I just make one comment? Let me just say that I am in admiration of your testimony. I think you have been very honest and very forthright. I think you have a very good grasp of what happened and what could have been prevented. In writing, I think you did everything you could to make your views known, and I only wish they had been listened to. So I am very grateful for your testimony. Thank you.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Mr. Chairman, earlier Mr. Van Zandt answered your question—and he can correct me if I understood this wrong, but I think the gist of Mr. Van Zandt's testimony was that he would have preferred to negotiate, if he could, get one person out, get two people out, get three people out, whoever you could get out, but from the notes I have, you were told to get 50 out. Was that sort of a fair analysis or fair restatement of your testimony?

Mr. VAN ZANDT. That is fair.

Senator LEAHY. Mr. Van Zandt, you were told by whom?

Mr. VAN ZANDT. By the on-scene commander, Jeff Jamar.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Well, I want to thank each of you for being here. Mr. Craddock, I wish I could ask you a lot of questions, but I understand you are on appeal, and the last thing this committee would want to do is interfere with that appeal. A lot of questions have been answered in the House hearings about this, but there are a lot of behind-the-scenes questions that I think a lot of us would like to have answered. Maybe someday we can discuss that with you after your appeal.

To make a long story short, this has been a particularly interesting panel, and I want to personally commend both of you gentlemen, Mr. Van Zandt and Mr. Smerick, for the work you have done in the past and the work that—what you have meant to this country and for the testimony, as candid as it has been today. I know it is difficult to come and testify the way you have when you have worked with people all your lives at the FBI. But it is important that we overview these matters, and where there are things that need to be corrected, that we correct them, and that we in Congress make sure that we do it in a fair manner. So that is what we are trying to do here, and I think these hearings are going to set a tone and standard for law enforcement, at least Federal law enforcement in this country in a way that just hasn't been done in the past. So we really appreciate the efforts you have put forth.

Senator FEINSTEIN. Mr. Chairman, I just need to correct the record, I think with Mr. Craddock's attorney, on one point.

The CHAIRMAN. Sure.

Senator FEINSTEIN. Because if I understood what you said, you said that Mr. Koresh made an offer to come in and talk.

Mr. BROWN. That is correct.

Senator FEINSTEIN. Was not that offer 6 months prior?

Mr. BROWN. Yes, it was. It was in, I believe, June 1992. It was made to a Henry McMahon, a gun dealer, and I want to say—it is a neighboring town.

Senator FEINSTEIN. And there were no charges pending against Mr. Koresh at that time?

Mr. BROWN. Nothing at that time. Apparently the ATF, Mr. Aguilera, was in Henry McMahon's gun shop at that moment, inquired about certain purchases being made by David Koresh. Mr. McMahon got David on the telephone. Mr. Aguilera would not accept the phone and then, secondly, would not accept the invitation to come out and view the weapons.

Senator FEINSTEIN. Well, after an arrest warrant was issued, there was no invitation by Mr. Koresh to come in and sit down and talk?

Mr. BROWN. Actually, I don't know that even that would be true because as the first ATF response members came off the back of what I would label vehicle No. 2 and approached the front door, shotgun in hand, armed with double-aught buck, running toward the front door, Mr. Koresh then opened the front door, hand on one door, one hand on the other, clearly demonstrating he was unarmed, and said, Wait a minute, can't we talk about this? There are women and children in here. That was met with a volley of gunfire. And then a shotgun blast was sent through the front door.

Senator FEINSTEIN. What day was that?

Mr. BROWN. That was on February 28.

Senator FEINSTEIN. On February 28, but I just want to say that the offer made by David Koresh to sit down and discuss was long before anything happened.

Mr. BROWN. Six months, approximately six to eight months prior, yes.

Senator FEINSTEIN. All right. Thank you.

Mr. BROWN. You are welcome.

The CHAIRMAN. Well, thank you. I want to thank each of you for being here. Thank you for coming. We are now going to go to panel No. 3, so we will release you folks.

The CHAIRMAN. I have to finish pretty close to 1 o'clock, so I am hoping that we can move ahead. The purpose of our third panel is to provide a forum for the Bureau to discuss the lessons learned at Waco and for us to determine what the Bureau will do differently so as to ensure that the public's confidence in Federal law enforcement is restored and that the mistakes made at Waco will not be repeated. I would now like to introduce the panelists.

Robin Montgomery is the special agent in charge of the Critical Incident Response Group of the FBI at Quantico. The group was formed by FBI in 1994 to address the problems that were identified after the Waco and Ruby Ridge incidents.

Bill Esposito is the Assistant Director of FBI for Criminal Investigation.

Gary Noesner currently serves as chief negotiator for the Crisis Management Unit of the Critical Incident Response Group at Quantico. During the siege, Supervisory Agent Noesner was the crisis negotiation team coordinator at Waco.

We want to welcome each of you gentlemen here. Mr. Esposito, we will put your full statement in the record. We would appreciate it if you would summarize, and we will turn the time over to you.

STATEMENT OF WILLIAM J. ESPOSITO, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC; ACCOMPANIED BY ROBIN MONTGOMERY, SPECIAL AGENT IN CHARGE, CRITICAL INCIDENT RESPONSE GROUP, FEDERAL BUREAU OF INVESTIGATION, QUANTICO, VA, AND GARY W. NOESNER, SUPERVISORY SPECIAL AGENT, CRITICAL INCIDENT RESPONSE GROUP, CRISIS MANAGEMENT UNIT, AND CHIEF NEGOTIATOR, FEDERAL BUREAU OF INVESTIGATION, QUANTICO, VA

STATEMENT OF WILLIAM J. ESPOSITO

Mr. ESPOSITO. Thank you. With your permission, Mr. Chairman, I have a chart which depicts the progress we have made since the Waco incident, and I would like to go over that with you.

[The information follows:]



CLARIFICATION OF JURISDICTION

DIAP RESOLUTION 12

- + Establishes lines of authority during crises

OPERATIONS

CREATION OF THE CRITICAL INCIDENT RESPONSE GROUP

- + Unifies all FBI crisis management assets

ON-SITE CRISIS MANAGERS

- + Specially-trained SACs will respond to major incidents
- + On-scene commander designated by the Director on a case-by-case basis

INCREASE THE SIZE OF THE HOSTAGE RESCUE TEAM

- + Allows for the retraining and rotation of personnel during a long-term crisis
- + Ability to respond to two major incidents occurring simultaneously

INCREASE IN THE NUMBER OF NEGOTIATORS

- + Five full-time negotiators in CIRG
- + Over 40 other negotiators across the nation

STANDARDIZATION OF S.W.A.T. TRAINING / EQUIPMENT

- + Nine "enhanced" S.W.A.T. teams to augment HRT

DIAP RESOLUTIONS 13 AND 14

- + Revamps shooting incident reviews
- + Establishes a uniform policy on deadly force

RESEARCH

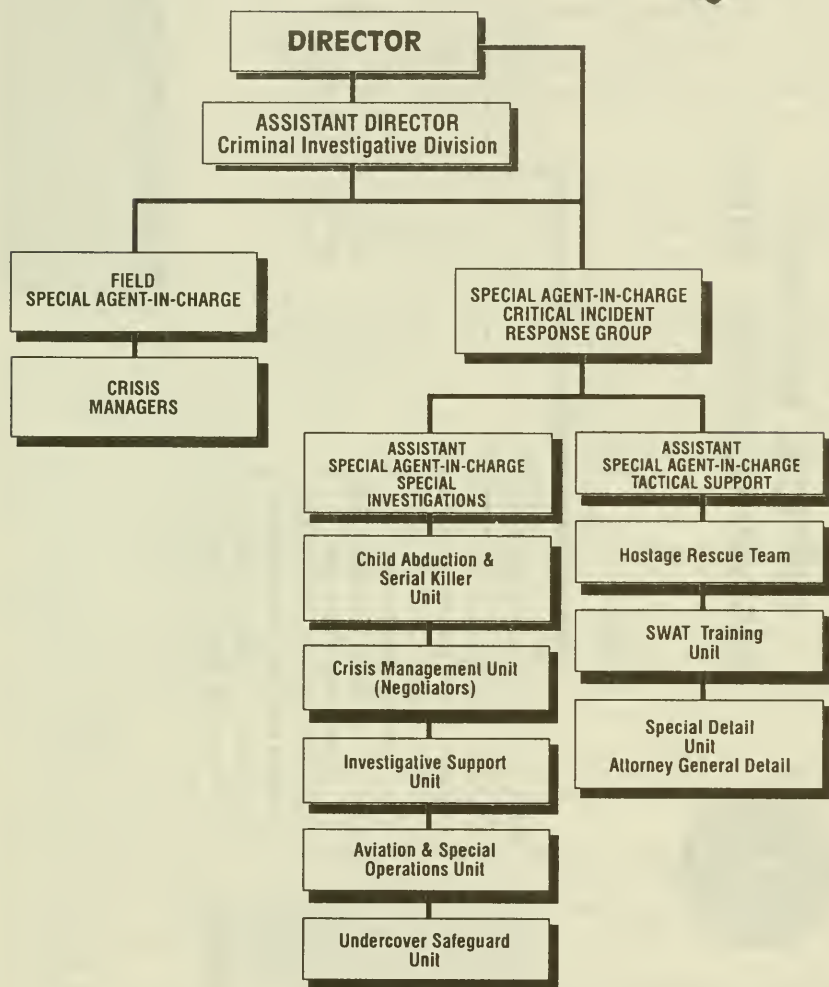
EXPANDED POOL OF OUTSIDE EXPERTS

- + Contact with Crisis Response Programs at Michigan State University and George Mason University
- + Recruit two outside behavioral science experts

HOBAS DATABASE

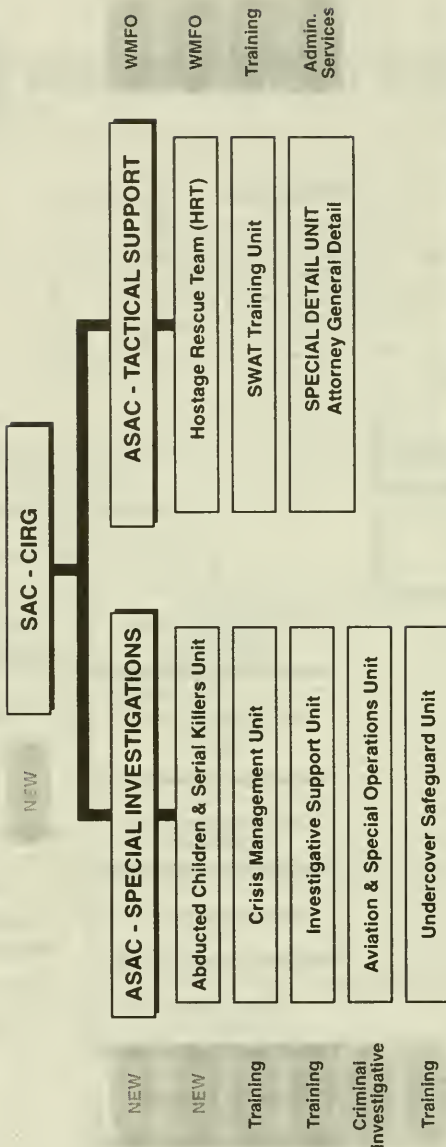
- + Hostage / Barricade data system to collect empirical and statistical data on previous crisis situations
- + HOBAS operational target date - June 1996

CRISIS MANAGEMENT





CRITICAL INCIDENT RESPONSE GROUP (CIRG)



LEGEND

Training - Previously Assigned Division

NEW - Newly Created

The CHAIRMAN. Go ahead, Mr. Esposito.

Mr. ESPOSITO. Basically, there were three major issues that we feel we have improved upon since the Waco incident in 1993. One is the clarification of jurisdiction; two is operations; and three is our research.

The CHAIRMAN. Pull your mike a little closer, Mr. Esposito.

Mr. ESPOSITO. OK. The first one is clarification of jurisdiction. As you know, in 1993 the Attorney General formed the Director of Investigative Agency Policies in the Department of Justice and made Director Freeh the Director of that policy board. Resolution 12 was passed a few months ago. This resolution establishes clear lines of authority during crisis within the Department of Justice law enforcement components.

The interesting thing and the important thing about this resolution, it also sets out procedures that if you are planning a serious raid that is going to use multiple agents that you have communication and coordination with the FBI. And that was one of the problems we had at Waco.

The second point is operations. The Director, in April of 1994, created the Critical Incident Response Group. Basically, this group brings all the entities together on crisis management. This chart over here indicates that at the time of the Waco incident you see the items marked in yellow. These particular entities were segregated into different areas. For example, the Hostage Rescue Team was assigned to our Washington field office. The SWAT training unit was down at Quantico. There was an imbalance between who was in charge. We have changed that.

This is the current configuration. It brings all these crisis teams together under one entity, which is headed up by Mr. Robin Montgomery.

The on-site managers, such as in the situation at Waco, we have increased the training for these managers in hostage negotiations. We have brought them back to Quantico, given them extensive training, and that training continues through use of exercises and of entities.

The on-scene commander for all these incidents will be personally selected by the Director of the FBI, as was the case in the recent Oklahoma bomb investigation.

We have increased the size of the Hostage Rescue Team, and we are still working on increasing that size. This would allow us the capability to rotate personnel so that they don't get fatigued. Also, if there is more than one incident at a time, we will be able to handle that.

Senator LEAHY. Mr. Chairman, could I interrupt one second to make a comment? I have just been informed that a bill that I am managing has just been called up on the floor by the majority leader, and I may be on that for some time. I do have a number of questions for the record that I would want submitted. I don't know whether I will be back before this panel ends, but I just wanted you to know the situation.

The CHAIRMAN. Well, thank you, Senator Leahy. We will be happy to keep the record open throughout the rest of this day for any questions any member of this committee cares to submit. We

will miss you because you have done a lot in these areas, and we appreciate the work you do on this committee.

Go ahead, Mr. Esposito.

Mr. ESPOSITO. Thank you.

The next thing we did was standardization of our SWAT training and equipment. We have taken nine SWAT teams from around the country and enhanced their capabilities which will help augment the Hostage Rescue Team.

Also, in connection with the Director of Investigative Agency Policies, we passed Resolutions 13 and 14. Basically, Resolution 13 revamps our shooting incident review, how we do that, and the after-action after an incident. Resolution 14 establishes a uniform policy on deadly force.

In the area of research, we have expanded our pool of outside experts. We have contacts with people in the behavioral sciences, in various academic institutions, and we are trying to enlarge that as we speak. We also are planning on hiring two behavioral science types, one who will have a specialty in conflict resolution. They will be on the rolls of the FBI and will be assigned to the Critical Incident Response Group at Quantico.

We also are in the process of working—we have been working on establishing a hostage data base. The software is being engineered, and it will be on-line by June of this year.

Basically, that summarizes a lot of the changes we have made since the Waco incident. But the bottom line is this: We are going to continue to look at all hostage situations, all crisis situations. We are not satisfied yet. We are going to keep making changes to hopefully improve. That will not prevent future situations, but we feel we have our minds set to continue to improve as we go along.

The other thing I want to stress is there is certainly an overlap now and a mind-set of having the negotiators and the tacticians and the behavioral sciences to blend together, to work together in crisis situations.

That is the end of my comments.

The CHAIRMAN. Thank you. You can see why I am such a supporter of Quantico and the behavioral research section down there at Quantico, plus the HRT, which in most cases are heroic figures who go out and risk their lives for us. In this particular case, there have been some very justifiable criticisms. But I take it all of these programs and plans have been implemented since Waco and Ruby Ridge.

Mr. ESPOSITO. Yes, they have.

The CHAIRMAN. As I understand it, our current Director was not involved in either of those situations.

Mr. ESPOSITO. That is correct.

The CHAIRMAN. He was not the Director at the time.

Mr. ESPOSITO. That is correct.

The CHAIRMAN. And although there has been some criticism of some of the decisions made since, the fact of the matter is all of these matters have occurred under the directorship of Director Freeh.

Mr. ESPOSITO. That is correct.

The CHAIRMAN. And yourself.

Mr. ESPOSITO. Yes.

The CHAIRMAN. Now, Mr. Bolz gave us a very clear and concise synopsis on the use of negotiations in hostage/barricade situations like you have been describing and like have been described here today and yesterday. Further, he explained that an incident commander should use negotiators and tacticians as tools to resolve the situation placing the emphasis on protecting life.

Now, my concern is that FBI commanders and agents do not understand the use of negotiators as a tool, and so the question is this: Does the FBI provide negotiation instruction in its basic agent training systems or specifically to those who would be potential incident commanders at incidents like the ones at Waco and Ruby Ridge?

Mr. MONTGOMERY. Could I answer that, Senator, please?

The CHAIRMAN. Yes. We are glad to have you answer that.

Mr. MONTGOMERY. Gary Noesner is the FBI's chief negotiator and has been instrumental in formulating the FBI's negotiation program. To answer to your question concerning training of potential on-scene commanders, potential leaders on negotiations philosophy, that is a definite yes. I would ask Gary to give you a more detailed response concerning what we in the FBI do in that discipline overall.

The CHAIRMAN. What you are doing since these incidents?

Mr. MONTGOMERY. That is correct.

The CHAIRMAN. OK. Mr. Noesner.

Mr. NOESNER. Well, specifically in the area of training management into the intricacies of negotiation and the importance of using that asset in conjunction with other resources available to them to make critical decision, we have undertaken an ambitious training program of SAC's around the country. We have brought them back to Quantico. In addition to negotiations training, they received training in crisis management command post operations, decision-making using a collaborative decisionmaking style. They have become familiar with technical assets, tactical assets. And in addition to that academic training at Quantico, we have taken them on scene to various field exercises and ensured that they are able to see how this operates in a real setting. In fact, they actually play part of that training and practice in the role that they will assume as a commander.

So we have taken quite a few advanced steps on that. We have always had that as part of our philosophical training, but it is definitely increased under this new set-up.

The CHAIRMAN. Well, that is great.

Mr. Esposito, many Americans are concerned that the FBI is being transformed from a law enforcement agency into a paramilitary agency. As you saw, we had the picture of the HRT member with two fully automatic weapons, assault weapons, on top of a military vehicle taken at Waco.

Now, how does the FBI plan to move away from paramilitary operations in the future in favor of purely law enforcement duties?

Mr. ESPOSITO. Well, our main thrust, Mr. Chairman, is law enforcement responsibilities. Now, if people call us military because in certain situations our people train together, they are disciplined, they have to wear the same type of uniforms to be identified, then that is not the case at all. Basically, our people are trained to take

a law enforcement response, in the case of the Hostage Rescue Team to save lives, and it is just not the case at all. We are not a military organization. We are a civilian organization. As a matter of fact, if I may digress and tell you the make-up of the Hostage Rescue Team, only about half of the people that are on the Hostage Rescue Team had a military background to begin with.

The CHAIRMAN. I see. One last question because my time is about up. What systems can be put in place to ensure that individuals in key decisionmaking positions are not empowered in the future to utilize the awesome power of the HRT in incidents like Waco where it really was inadvisable?

Mr. ESPOSITO. Well, I think the number of changes that we have made could prevent that in the future. No. 1, the Hostage Rescue Team and its entities in the CIRG can only be deployed by the Director. Two—

The CHAIRMAN. And that is a change?

Mr. ESPOSITO. That is a change.

The CHAIRMAN. So Director Freeh is going to take this under his own direct supervision.

Mr. ESPOSITO. Correct.

The CHAIRMAN. In these types of situations.

Mr. ESPOSITO. That is correct. And as you can see by the organizational chart, Mr. Montgomery reports to me and to the Director.

The second thing that is important to note here is the on-scene commander for a crisis situation is selected personally by the Director, and what we have tried to do is establish a cadre of special agents in charge who have received extensive training in areas such as crisis management, hostage negotiation, and things related to crisis situations. These special agents in charge have gone through various practical problems. They have experience in the past in some of these situations. And that is the pool from which the Director will select individuals.

Mr. MONTGOMERY. Could I add something to that, Senator? Senator Feinstein asked a question at another meeting we had during the Ruby Ridge hearings, and I mentioned at that time the changes that have been made to act responsibly and not precipitously, and I think that is something that we have also changed. We have formed a cadre that can go out immediately to observe a crisis as it is beginning to take place and actually make an accurate assessment of what kinds of resources are really needed to address the particular problem.

We didn't really do that necessarily beforehand, so I think that will add a long ways.

The CHAIRMAN. Thank you. I am very appreciative of Senator Feinstein and her devotion to working on this committee the way she has. So we will turn to you, Senator Feinstein, for the last few questions.

Senator FEINSTEIN. Thank you, Mr. Chairman.

I don't have any questions about what you are doing in terms of reorganizing and changing the process somewhat. I think those are all very good. But what I am really interested in—and no one has really said—is what lessons have Waco and Ruby Ridge taught the FBI. And I want to ask each of you for your response, and these

are the areas—I would also like them responded to in writing by the Director.

You mentioned, Mr. Montgomery, use of resources. What have you learned, use of resources, military equipment, and tactics? What have you learned negotiations being impacted by tactics? What have you learned on your intelligence gathering, not only just within the FBI but with other agencies as well, with your communications structure and with your command responsibilities? Those are the areas I would like each of you to comment on, if you could.

Mr. ESPOSITO. If I may start, Senator, I think there are a number of lessons we have learned from both incidents, and I don't know if I can spiel them off all in a row. But one of the big things—and that is why I mentioned Resolution 12 of the DIAP—is there needs to be closer coordination among the Federal agencies to discuss situations before they get out of hand so that we could have a better dialog not only among ourselves but maybe we could look at somebody's operational plan and say why are we going this way, why are we going to have this huge assault.

Senator FEINSTEIN. So you are saying direct responsibility by No. 1 and No. 2 within the Criminal Investigation Unit. Is that correct?

Mr. ESPOSITO. Correct.

Senator FEINSTEIN. To discuss prior to any mission taking place which could result in the loss of life.

Mr. ESPOSITO. That is correct.

The other lessons I think we have learned is that there certainly does need to be enhanced communications between the tactical side, the negotiations side, and the behavioral science side. And we are looking into that. The changes we have made enhance that capability, and we will continue to work on that.

There are several other changes, but those are the two big ones that come to my mind, and I will ask Mr. Montgomery to comment.

Mr. MONTGOMERY. I think the most critical change is the identification of a cadre of leaders that will end up, if we have another one of these things, on scene having to understand the various disciplines that we bring to bear on a crisis, understanding the need to weigh negotiations strategy with tactical strategy, understanding how the technical components play a role in all this.

You have said it before, and I think you were quite pointed about responsibility being affixed to leadership in the FBI for these kinds of incidents, and it is not, it should not be the responsibility of somebody in the negotiating cell or the tactical arm to have the brunt of a particular crisis placed on their shoulders. It is our responsibility as leaders in the FBI, and what we have made an effort to do since Waco is to educate our leadership on all of these nuances so that we don't—so that we have the best people possible.

Senator FEINSTEIN. But you are being too general. I want to get right down to the nitty-gritty in both Waco and Ruby Ridge. My finding is that your negotiation versus your tactics is highly flawed because in a confrontational situation, unless you let the negotiator call some of the shots, it is going to conflict with the tactics. And I have no doubt in my mind that the tactics were dynamic entry from the beginning and that the tactics were with respect to Mr. Weaver to take out that entire place. And I think, judging from what I have seen, it is directly contrary to the negotiations stance.

Mr. MONTGOMERY. I disagree with you, but what I would like to do, Gary Noesner is our chief negotiator. He will tell you—I will let him tell you—the on-scene commander has the ultimate responsibility. And I think he can go into some of the efforts we have undertaken since Waco to educate our management in that vein. Gary.

Mr. NOESNER. I think leadership is clearly the central issue. I think it is easy for people from the outside to view the tragedies of Idaho and Waco and suggest that the FBI's system was somehow inherently deficient. And I think decisionmaking was the problem encountered in both of those situations. We for many years, over 20 years, have had very skilled negotiation, tactical, technical components, and the philosophy that we have long talked and have been the leader around the world and in the Nation—police departments follow our program all over the world—is that these components work together.

The two instances that tragically led to these hearings are, in essence, I believe, situations where decisionmaking broke down and that the balance of these components working together was not adhered to.

There wasn't a simple communication problem between tactics and negotiators. We had philosophical differences of opinion, and that goes to the on-scene commander to weigh the options and to view all the possibilities and to make an educated decision based on his own experiences and other input. In both these cases, there was an imbalance. I think the training we have done with management staff is largely and properly focused to correct that area which represents—

Senator FEINSTEIN. Let me give you a specific example. Rodriguez calls and said they have been tipped off. Then who would make the decision whether to ignore or not ignore?

Mr. NOESNER. Well, that is ATF.

Senator FEINSTEIN. Well, that is ATF. That is right.

Mr. MONTGOMERY. I think by their own admission they erred in that decisionmaking when that happened. I think I heard that yesterday.

The CHAIRMAN. Well, does the DIAP Resolution 12 solve that problem, establishing the line of authority during—

Mr. ESPOSITO. The Justice—

The CHAIRMAN. Or do we still have the problem because ATF is a separate agency?

Mr. ESPOSITO. That is correct.

The CHAIRMAN. We still have the problem.

Senator FEINSTEIN. But it could well have been an FBI problem. Who would have made the decision, the on-scene commander?

Mr. ESPOSITO. Yes, the on-scene commander.

Senator FEINSTEIN. It would have gone no farther than that?

Mr. ESPOSITO. To me that was an instantaneous decision because they had to make the decision in 5 minutes, so it was up to the on-scene commander.

Senator FEINSTEIN. Fine. The use of gas, that was not an instantaneous decision. Who should make that decision in the future then?

Mr. ESPOSITO. In a similar situation today that we had such as at Waco, that has to come from Washington, and I understand that was made at the highest levels.

Senator FEINSTEIN. And the use of high-level military equipment like tanks, who would make that decision?

Mr. ESPOSITO. That would come back to Washington, also.

Senator FEINSTEIN. Would that be No. 1 and No. 2 in Criminal Investigation or in Justice?

Mr. ESPOSITO. It would probably go over to the Attorney General, but at the very least, the Director.

Senator FEINSTEIN. Because we heard Mr. Van Zandt describe what he told the SAC at the time, which appears to me to have been ignored. Now, perhaps I am wrong, but it just seems to me there has to be some process, and I recognize speed is a major factor here, but to consider when there are different points of view vis-a-vis negotiations.

Mr. ESPOSITO. There certainly appeared—I read all the after-action reports on Waco—not all of them, but most of them, and there certainly was a disconnect between the negotiations and the tactical people. And the changes, we believe, that we have made will prevent that from happening in the future, and that is why the Director himself will select the on-scene commander in all future crisis situations.

Senator FEINSTEIN. From the group that you are setting up, Mr. Montgomery.

Mr. MONTGOMERY. Yes, madam. Yes.

Senator FEINSTEIN. And how many on-scene commanders will there be available in the Nation?

Mr. MONTGOMERY. Well, at this point we——

Senator FEINSTEIN. Trained and——

Mr. MONTGOMERY. Excuse me?

Senator FEINSTEIN. Trained?

Mr. MONTGOMERY. Yes; We have had 30 of our 56 SAC's go through a variety of these training scenarios, considering all the assets here. But there is an initial cadre of 15 that were trained extensively when this group was first formed that the Director has drawn from on some of the other major crises we have had subsequent to Waco. But our efforts would be to educate everybody as best we can.

Mr. ESPOSITO. I might add that even the agents assigned to the Hostage Rescue Team have received training in hostage negotiations since this incident.

Senator FEINSTEIN. One of the things we found out in Ruby Ridge was that ATF had an intelligence person undercover in the Aryan Nations, and FBI did as well, and neither knew the other had one. What will in the future prevent this kind of thing from happening?

Mr. ESPOSITO. Well, those types of things can happen, but I think what needs to be done is there needs to be communication between the various law enforcement agencies, especially at the local level. The agent in Idaho from ATF needs to be talking to the agent from the FBI and sharing what information they are working on.

Mr. MONTGOMERY. One of the things we have initiated, we brought back members of the Attorney General's Advisory Committee, U.S. attorneys, approximately 18, and their FBI SAC counterpart and took them through a course concerning crisis management, and the emphasis was for the U.S. attorneys to see what is going on in their judicial districts, to act perhaps as a conduit when they see the FBI is doing one thing and the ATF is doing something similar, that they act as a referee, if you will, but make people aware that you have got two similar investigations ongoing. So they play a vital role as well.

Senator FEINSTEIN. Thank you all. Thank you very much.

The CHAIRMAN. Thank you, Senator Feinstein.

[The prepared statement of Mr. Esposito follows:]

PREPARED STATEMENT OF WILLIAM J. ESPOSITO

Good afternoon Mr. Chairman and members of the Committee. I am William J. Esposito, the assistant director of the Criminal Investigative Division at FBI Headquarters.

Let me say right up front that I was not involved with the events that occurred at Waco, Texas. I have no first-hand knowledge of circumstances at Waco, nor am I in a position to offer any insight into the decision making process that was employed there. I am, however, prepared to provide you with any information that relates to the stated purpose of this hearing, that is, how the FBI has changed its crisis response policies and the manner in which we are now structured to deal with future situations like Waco.

The FBI's performance at Waco has been subjected to a number of congressional reviews, as well as Department of Justice analyses. An additional outside evaluation was conducted by Mr. Edward S.G. Dennis, Jr., a former assistant attorney general.

In response to the numerous reviews, former Deputy Attorney General Phillip B. Heymann issued a report titled "Lessons of Waco: Proposed Changes in Federal Law Enforcement." This report contains several recommendations—most of which have already been adopted—for improving the capability of the FBI to handle major incidents.

Before addressing the reorganization which the FBI has undertaken with respect to crisis management, it is important for this Committee to understand that no amount of preparation, no amount of research can prepare for the unforeseen. However, having said that, I feel that the crisis management structure now in the FBI, and the attention it is receiving, will place us in a better posture for dealing with crisis situations.

We learn from our experiences, good and bad, and the FBI is no different in that regard. Law enforcement methods change as the face of crime changes. We train based on law enforcement problems which have occurred, or are likely to occur, given the body of knowledge collected from all kinds of law enforcement sources.

Which brings us here today, Mr. Chairman, to discuss what we have learned since Waco, and that is what I am prepared to share with you. The FBI has improved three facets of its operations in response to its experiences in Waco: (1) issues over jurisdiction have been clarified; (2) crisis response operations have been reorganized and expanded, including the availability and use of outside experts; and, (3) research efforts have been enhanced.

JURISDICTION—MEMORANDA OF UNDERSTANDING

In his role as the Director of Investigative Agency Policies (DIAP), Director Freeh has issued Resolution 12 which has been approved by the Attorney General. Resolution 12 established policy to govern agencies' use of the FBI's crisis management resources in the field, as well as components of the Critical Incident Response Group (CIRG). Resolution 12 clearly establishes lines of authority during crises and will avert confusion when a crisis occurs. Additionally, Resolution 12 requires other Department of Justice investigative agencies to consult and coordinate with the FBI when the degree of threat in one of their cases requires and allows for preplanning.

OPERATIONS—CREATION OF CIRG

In April, 1994, Director Freeh reorganized the FBI's crisis response resources into a single entity, the Critical Incident Response Group (CIRG). The CIRG operates

under the leadership of an FBI executive who reports directly to the Director and who is experienced in crisis management issues. The CIRG will respond to hostage-taking and barricade situations as necessary. Through the creation of the CIRG, the FBI will have immediate access to a broad range of law enforcement tools to resolve these dangerous situations as quickly and as peacefully as possible.

The CIRG places responsibility on senior FBI leadership and directly establishes accountability on specific individuals, including the Director, for crisis management. CIRG fully integrates crisis negotiators and the Hostage Rescue Team (HRT) and joins them at the same level under a unified command. CIRG ensures an equal footing between tactical and nontactical components with a Special Agent in Charge and the Director overseeing the process. Furthermore, whenever the HRT deploys, CIRG negotiators will go with them.

ON-SITE CRISIS MANAGERS

As part of the crisis management overhaul, more than half of our Special Agents in Charge have received specialized crisis management training from the CIRG. This cadre of SACs will assist in any major hostage/barricade situation or other crisis requiring the services of the HRT or other FBI resources. The Director will designate the on-scene commander on a case-by-case basis, as was successfully done in the Oklahoma City bombing. Several of these specially-trained SACs will be dispatched to each crisis to enable them to staff the command post 24 hours a day and to prevent fatigue of any particular SAC.

INCREASE IN THE SIZE OF HRT

With the support of Congress, the FBI is increasing the size of the HRT to allow it to address more than one major crisis at a time. Increasing the HRT will allow for retraining and/or rotation of fatigued personnel during a long-term crisis. When fully staffed, the HRT will have 91 members. The HRT is presently in the process of selecting and training additional operators. As discussed below, a new, enhanced SWAT program is also in place which will augment the HRT as needed.

INCREASES IN THE NUMBER OF NEGOTIATORS

The negotiating component of the CIRG has been increased from two to five negotiators. Additionally, 40 other specially-trained hostage negotiators, located throughout the United States, who form the Critical Incident Negotiations Team (CINT), are available for rapid deployment.

During the standoff at Waco, the FBI also learned its negotiators and tactical operators believed at times they were working at cross purposes. Therefore, in addition to increasing its negotiating capacity, the FBI has further emphasized cross-training of tactical and negotiating components and placed both on equal footing in the new crisis management structure.

STANDARDIZATION OF SWAT TRAINING AND EQUIPMENT

Nine enhanced Special Weapons and Tactics (SWAT) teams comprised of approximately 355 Special Agents are strategically placed throughout the country. Approximately 650 Special Agents are members of SWAT in the remaining field offices. The enhanced teams have had their equipment upgraded and their mandated training increased to three days per month.

In addition, the CIRG has placed the SWAT Training Unit under the direct supervision of the HRT commander. The enhanced SWAT teams participate in joint training with the HRT to foster cooperation and ensure familiarity of personnel and tactics. The training includes staged hostage/barricade situations in which both HRT and SWAT teams are deployed.

DIAP RESOLUTIONS 13 AND 14

In addition to DIAP Resolution 12 discussed earlier, Director Freeh issued Resolutions 13 and 14. Resolution 13 revamps the way that shooting incidents are reported and establishes a uniform policy for the investigation of shooting incidents as they occur within the law enforcement components of the Department of Justice.

Resolution 14 establishes a uniform policy with respect to the use of deadly force in both custodial and non-custodial situations.

RESEARCH—EXPANDED POOL OF OUTSIDE EXPERTS

When crisis situations arise, the FBI must have immediate access to a large pool of outside experts for consultation. The CIRG is in the process of developing relationships with a network of specialists in behavioral science and many other disciplines so that in future crises, the FBI will have the immediate benefit of consulting with a greatly expanded variety of outside experts who are not assembled on an ad hoc basis, as was done in Waco.

The FBI has initiated contacts with Michigan State and George Mason Universities. Both schools have developed crisis incident or crisis response programs and address the same issues law enforcement faces in crisis situations. We are currently trying to recruit two outside behavioral science experts, one of whom will be experienced in conflict resolution.

HOBAS DATABASE

The CIRG is developing a hostage/barricade data system (HOBAS) to assist law enforcement crisis negotiators and commanders during crisis operations. HOBAS will be a collection of empirical and statistical data regarding previous hostage/barricade situations. CIRG personnel have travelled to other countries to consult, obtain, and share information on hostage/barricade situations with foreign law enforcement officials. Software has been developed for the HOBAS system and once data is obtained from questionnaires sent to law enforcement agencies nationwide, it will be loaded into the system. We anticipate being operational with HOBAS in June, 1996.

In addition to the above changes in jurisdiction, operations, and research, the Attorney General, the FBI Director, a large number of SACs, all FBI profilers, and an FBI Agent from every field office are all receiving or have received crisis management training. This training includes behavioral science expert training and information enabling them to become familiar with CIRG, its components, capabilities and procedures.

Mr. Chairman, the FBI has undergone a number of significant changes with respect to crisis management. We will continue to conduct research into methods which improve our crisis handling and we will constantly reassess our capabilities to ensure that we remain prepared to resolve future crisis situations successfully.

The CHAIRMAN. Without objection, I will put this Failure Analysis Associates report into the record.

[The report follows:]

FaAA-SF-R-95-07-10

**Investigation of the
April 19, 1993 Assault on the
Mt. Carmel Center
Waco, Texas**

Prepared by:

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Prepared for:

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Fairfax, Virginia

July 1995



Introduction

Failure Analysis Associates Inc. (FaAA), headquartered in Menlo Park, California, was founded in 1967 and is the largest engineering firm in the nation dedicated primarily to the analysis and investigation of failures of an engineering or scientific nature. FaAA is a wholly owned subsidiary and the largest operating unit of The Failure Group, Inc. (Failure). Failure employs more than 435 full time staff, including more than 265 degreed professionals, more than 90 of whom hold doctorates in their fields.

Failure Analysis provides a broad range of engineering disciplines including aeronautical, marine, chemical, civil, electrical, environmental, materials and mechanical engineering. Other technical disciplines include biomechanics, computer science, geology, human performance, statistics and visual animation. They conduct their work in nine offices throughout the country including one of the nation's largest privately operated vehicle testing facilities located in Phoenix, Arizona.

Since its founding, the company has established a world-wide practice in the independent investigation, reconstruction and prevention of accidents involving structures, products, machinery and facilities. Clients include industrial corporations, insurance companies, government agencies and attorneys.

Each year the company works on over 2000 projects ranging from hotel fires to toxic waste assessments, crane collapses to product recalls, and industrial explosions to toy safety. Failure Analysis has investigated many well-known accidents and failures such as the grounding of the Exxon Valdez, the explosion of the Challenger Space Shuttle, and the NBC Dateline episode concerning gas tanks in General Motors pick-up trucks.

The company recently fielded a team of structural engineers, including a specialist in the design of buildings for protection against explosions, to assist in the Oklahoma City bombing investigation. FaAA has also conducted independent investigations concerning the assassination of President Kennedy and the murders of Nicole Simpson and Ronald Goldman. Past FaAA research has also included murder and wrongful death investigations, gun and safety design issues and arson and explosion investigations.

The present investigation represents an effort which initiated on 14 June 1995 when the NRA retained FaAA to analyze evidence connected with the government's assault on the Branch Davidian Center in Waco, Texas. The investigation consists of individual tasks, the results of which are summarized below.



Construction of Computer Model of Mt. Carmel Center

FaAA constructed a three-dimensional computer model of the Mt. Carmel Center utilizing data from a Federal Bureau of Investigation (FBI) Laboratory report (photogrammetric analysis and site survey), sketches provided in a Treasury Department Report, and careful examination of numerous photographs of the center. Although the structure is dimensionally accurate, damage caused by the tank assaults are schematic only; exact dimensions of damage are unavailable as the structure was destroyed by fire. The computer model was used in all subsequent analyses.

Gas Assault Analysis

FaAA performed an analysis of the gas assault through extensive review of numerous reports and documents including the United States Department of Justice Report on the Events at Waco, Texas, February 28 to April 19, 1993, the FBI FD-302 Reports, United States of America vs. B.E. Branch, *et al.* Trial Testimony, CNN video, FBI aerial photographs taken April 19, 1993, the FBI aerial forward looking infrared (FLIR) video, manufacturer's data, and published technical and medical literature.

Findings derived from this analysis are listed below:

CS Tear Gas

- Orthochlorobenzylidene malononitrile (CS) is a chemical which is dissolved in a liquid solvent, methylene chloride (dichloromethane) in this case, and dispersed as an aerosol.
- A CS concentration of 10 mg/m³ is sufficient to deter trained soldiers.¹

Means of Gas Delivery During the Assault

- 40 mm Ferret® rounds launched from conventional military M-79 grenade launchers by personnel inside five Bradley fighting vehicles. Each Ferret® round contains 3.7 grams of CS dissolved in 33.25 grams of methylene chloride.
- ISPRAs Protectojet Model 5 Anti-Mob Fog Ejectors mounted to the booms of two combat engineering vehicles or CEV's. A CEV is basically an M60 tank with a boom replacing the main gun. Four ejectors were mounted on CEV-1 while two ejectors were mounted on CEV-2. Each Model 5 Ejector (M5) consists of a pressurized bottle containing 30 grams of CS dissolved in 1070 grams of methylene chloride and 700 grams of carbon dioxide propellant.



Assault Sequence

1. The first assault started at approximately 6:00 am.
 - The original plan, which called for incremental gassing over several days, was "compromised" after discharge of one M5 bottle as a result of reported gunfire from the Davidians and the pace of the operation escalated.
 - A total of 6 M5 bottles were discharged during first assault.
 - CS concentrations in the rooms directly injected by gas from M5 delivery alone ranged from 2 to 90 times that required to deter trained soldiers.
 - Methylene chloride concentrations in the rooms directly injected by gas were as high as 1.8 times the IDLH (Immediately Dangerous to Life and Health concentration)² and nearly to the concentration that would render a person unconscious.
 - Ferret[®] rounds were delivered through "every" window.
 - The maximum calculated concentration resulting from a single Ferret[®] round in this assault was 16 times that required to deter trained soldiers.
2. The second assault started at approximately 7:30 am.
 - A total of 6 M5 bottles were discharged during the second assault.
 - CS concentrations in the rooms directly injected by gas from M5 delivery alone ranged from 2 to 80 times that required to deter trained soldiers.
 - Methylene chloride concentrations in the rooms directly injected by gas were as high as 1.6 times the IDLH and nearly to the concentration that would render a person unconscious.
 - Continued delivery of Ferret[®] rounds occurred throughout the second assault.
3. The third assault started at approximately 9:00 am.
 - CEV-2 experienced mechanical problems and was no longer available.
 - A total of 4 M5 bottles were discharged during the third assault.
 - CS concentrations in the rooms directly injected by gas from M5 delivery alone ranged from 30 to 90 times that required to deter trained soldiers.
 - Methylene chloride concentrations in the rooms directly injected by gas were as high as 1.8 times the IDLH and nearly to the concentration that would render a person unconscious.
 - Continued delivery of Ferret[®] rounds occurred throughout the third assault.
 - Almost all available Ferret[®] rounds were delivered.
 - A portion of the gymnasium was demolished.
4. The fourth assault started at approximately 11:45 am.
 - A total of 4 M5 bottles were discharged during fourth assault.
 - CS concentrations in the rooms directly injected by gas from M5 delivery alone ranged from 5 to 60 times that required to deter trained soldiers.



- CS concentrations in the kitchen/dining room areas were approximately 9 times that required to deter trained soldiers.
- Methylene chloride concentrations as high as 1.2 times the IDLH were obtained.
- Deep penetrations were made into the structure at the middle of the front face and at the front door.

A summary of the concentrations obtained in the individual gas assaults is provided in the table below.

Injected Room Gas Concentrations Achieved During CEV Gas Assaults		
Gas Assault Number	CS Concentration Range, multiple of deterrent concentration*	Maximum Methylene Chloride Concentration, multiple of IDLH concentration ⁺
1	2 to 90	1.8
2	2 to 80	1.6
3	30 to 90	1.8
4	5 to 60	1.2

* CS concentration of 10 mg/m³ will deter trained soldiers.

⁺ Immediately dangerous to life and health concentration (IDLH) for methylene chloride is 5,000 ppm (17,400 mg/m³).

Total Gas Delivered

- 20 M5 bottles and 366 to 386 Ferret[®] rounds were delivered (approximately 1,900 grams of CS and 33,000 grams of methylene chloride).

Fire Cause and Origin Investigation

FaAA performed a fire cause and origin investigation with the available evidence from the destroyed Branch Davidian center at Mt. Carmel. This effort involved the detailed analysis of a wide range of material, such as commercial and private video footage, FBI aerial forward looking infra-red (FLIR) footage, photographs, the U.S. Department of Justice Report, the Fire Investigation Report by Paul Gray *et. al.*, the Fire Development



Analysis by J. Quintiere and F. Mowrer, testimony by surviving members of the Branch Davidians, autopsy reports, and other materials. The principal conclusions from this investigation are:

- At least three separate fires were ignited in the Branch Davidian center within a time period of two minutes. These fires and the time that they are first visible are:
 - Fire 1 12:07:41 - the FLIR image shows the onset of a fire in the second floor of the tower at the front, right hand side of the center.
 - Fire 2 12:08:11 - the FLIR records a heat image at a rear window of the dining room. At the same time, a moderate quantity of white smoke is released at the rear of the dining room, as observed on video coverage by the Canadian Broadcast Corporation.
 - Fire 3 12:09:44 - the FLIR image shows the onset of a fire in the second window from the left on the southeast side of the chapel.
- The National Oceanic and Atmospheric Administration weather station in Waco recorded high winds beginning at noon on April 18, 1993. These winds continued unabated through the gas assault on April 19, 1993. At 11:52 am on April 19, these winds were recorded at 24 miles per hour (mph), with gusts to 30 mph. These high winds, coupled with the penetration of all windows by Ferret® rounds and the large holes opened in the structure by the Combat Engineering Vehicles (CEV's), significantly increased the rate at which fire spread through the Branch Davidian center. Given the high winds, the lack of on-sight fire fighting equipment, a primary wood structure, and any possibility of fire, the timing of the assault was predictably extremely unfortunate.
- By 12:14 PM, only six minutes after the first fire was detected, the fires had spread to fully involve the dining room, chapel, gymnasium, and second floor rooms in the front, right tower, as shown in Figure 6.
- Given the combustible wood construction of the center, the high winds present, the penetration of all windows by Ferret® rounds, and the large holes opened in the structure by the CEV's, the only effective way to fight the fires would have been to have fire equipment on site when the fires started.
- During the fire on April 19, 1993, fire-fighting equipment was not on-site until after the fire had destroyed the entire center, as shown in Figure 7.
- The methylene chloride used as the carrier agent for CS gas delivered through 40mm Ferret® rounds and the delivery systems mounted on the CEVs was not of sufficient quantity to play a significant role in the ignition or spread of the fire.
- FaAA has not been able to determine who ignited the three fires on April 19, 1993.



Fatality Analysis

FaAA investigated the official causes of death for the fatalities resulting from the initial assault (February 28, 1993), siege, and final conflagration at Mt. Carmel (April 19, 1993). FaAA engineers and health care professionals evaluated 86 autopsy reports and any available toxicological test results. In addition, FaAA obtained death certificates for 71 of the Branch Davidians. Information from the autopsy reports and death certificates was cross-referenced with data from Dr. Peerwani's *Summary Report on Forensic Examination of Human Remains from the Branch Davidian Compound, Mount Carmel, McLennan County, Texas* (September 29, 1993), which also reported the location of each set of remains at Mt. Carmel. Information from the autopsy reports, death certificates, and Dr. Peerwani's summary report was entered into a computerized master database.

To date, analysis of the data has resulted in the following noteworthy observations:

- Seventy-six Branch Davidians died on April 19, including 25 children, 30 women, and 21 men. Therefore, 72% of the fatalities (55 out of 76) on April 19 were women and children as shown in Figure 8.
- Many of the remains were in an advanced state of decomposition by the time an autopsy was performed. Recovery of the last of 76 Branch Davidian bodies was completed on April 29, ten days following the date of death. The last autopsies were performed three weeks following the date of death. The average time interval between death and autopsy was 12 days. These time intervals may significantly affect the outcome of toxicological tests.
- Multiple causes of death were reported for many of the Branch Davidians. Reported causes of death and immediate contributing factors included a combination of burn injuries (28%), smoke inhalation (27%), asphyxiation (due to carbon monoxide inhalation) (25%), gun shot wounds (11%), asphyxiation (due to suffocation) (6%), and miscellaneous trauma (3%) as shown in Figure 9. Because multiple potentially fatal events occurred contemporaneously, it was not always possible for the medical examiners to determine a single cause of death for each Branch Davidian. Furthermore, causes of death and contributing factors were not determined for two of the children, whose remains were badly fragmented and decomposed.
- Eighty percent of the reported causes of death and immediate contributing factors were attributed to fire-related causes (thermal injuries, smoke inhalation, asphyxiation due to carbon monoxide inhalation).
- Blood carboxyhemoglobin saturations were reported for fifty of the Branch Davidians and ranged from approximately 4 to 79%. As noted in Dr. Peerwani's summary report, carbon monoxide is produced in fires, and carboxyhemoglobin saturations can increase rapidly. FaAA's research also revealed that carbon monoxide



can be produced by the combustion of CS tear gas. Postmortem carboxyhemoglobin saturations exceeding 50% are typically associated with fatality.

- Forty-four of the Branch Davidians tested positive for cyanide. Cyanide concentrations in the blood ranged from 0.03 to 3.5 µg/ml. These levels of cyanide are consistent with the combustion of some plastics and organic materials, thermal decomposition of CS tear gas during the fire, and/or metabolism of high concentrations of CS to cyanide *in vivo*. In Dr. Peerwani's summary report, the maximum cyanide level was incorrectly reported as 1.18 µg/ml.
- According to the U.S. Department of Health and Human Services published literature,^{3,4} 2.5 µg/ml is the minimum concentration of cyanide in the blood that can lead to coma and death. This implies that at least one of the Branch Davidians may have been in danger of cyanide-induced fatality. In Dr. Peerwani's summary report, an average lethal cyanide concentration was reported as 12.4 µg/ml for cyanide-related fatalities.
- Carbon monoxide and cyanide are known to have additive toxic effects. Similarly, the toxicity of carbon monoxide is increased in the presence of 5% carbon dioxide.
- The toxicity of hydrogen cyanide increases in the presence of carbon dioxide. It is well known that CS gas is metabolized by the body to form cyanide. Hence, some questions may arise as to the use of carbon dioxide propellant for the CS gas.

Endnotes

1. H. Himsworth, D.A.K. Black, T. Crawford, A.C. Dornhorst, J.C. Gilson, A. Neuberger, W.D.M. Paton, L. Snowden, R.H.S. Thompson, "Report of the enquiry into the Medical and Toxicological aspects of CS (Orthochlorobenzylidene Malononitrile), Part 11. Enquiry into the Toxicological Aspects of CS and its use for Civil Purposes," Home Office, Her Majesty's Stationery Office, London, September 1971.
2. Material safety data sheet for methylene chloride (CAS No. 75-09-2), Revision G, Genium Publishing Corp., Schenectady, NY, June 1994.
3. Diagnosis and Treatment of Human Poisoning. Elsevier Publishing Company, New York, 1988.
4. Syracuse Research Corporation under contract to Clement International Corporation (Contract No. 205-88-0608): Toxicological Profile for Cyanide, Draft. Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services, Public Health Service. October 1991.



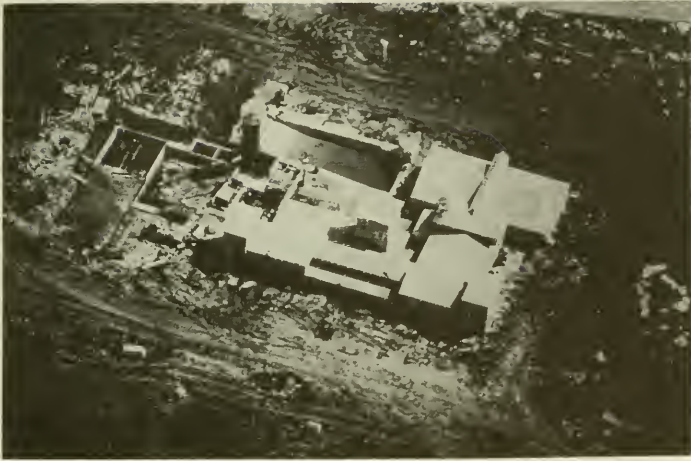


Figure 1. An aerial view of the front of the Mt. Carmel Center after three CEV gas assaults. The assaults focused on the left side as the two CEVs delivered gas to the first four windows from the left on the first floor and the first two windows from the left on the second floor. The front door area was damaged by a CEV; however, no gas was delivered at that time.

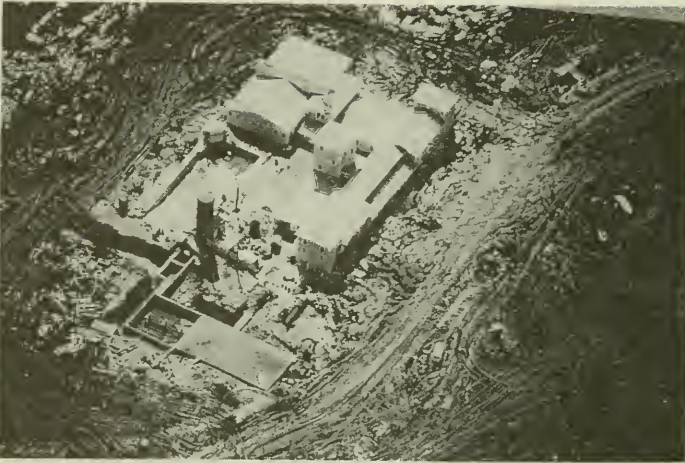


Figure 2. An aerial view of the left side of the Mt. Carmel Center after three CEV gas assaults. There were no CEV penetrations into the left faces of the structure.



Figure 3. An aerial view of the back side of the Mt. Carmel Center after three CEV gas assaults. The back face of the gymnasium had CEV penetrations in the area of the fifth window from the right and near to the left edge.



Figure 4. An aerial view of the right side of the Mt. Carmel Center after three CEV gas assaults. Evidence is shown of CEV penetrations to the first and third windows from the right (Chapel) on the first floor as well as to Koresh's quarters and the area of the second window from the left on the second floor. Note that demolition of the gymnasium had started at this time and the presence of a concrete slab which supports many go carts and some debris from the CEV assaults in the area in front of the Chapel.



Figure 5. An aerial view of the left side of the Mt. Carmel Center during the fourth CEV assault. At this time, approximately half of the gymnasium had been demolished and a CEV was penetrating deep into the center of the front of the structure.



Figure 6. FBI aerial photograph of the Mt. Carmel Center, approximately 6 minutes after the first fire was detected. Rapid fire spread is observed in the southeast tower (fire #1), the dining room (fire #2), and the chapel/gymnasium (fire #3).



Figure 7. FBI aerial photograph of the Mt. Carmel Center, prior to arrival of fire fighting equipment. Nearly complete destruction of the center is evident.

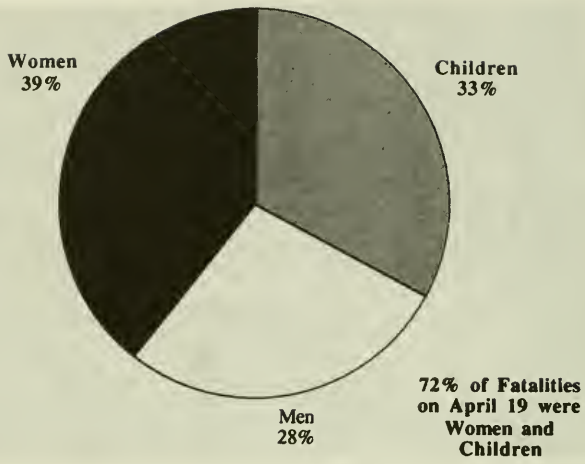


Figure 8. Branch Davidian Fatalities on April 19, 1993 by Sex and Age.

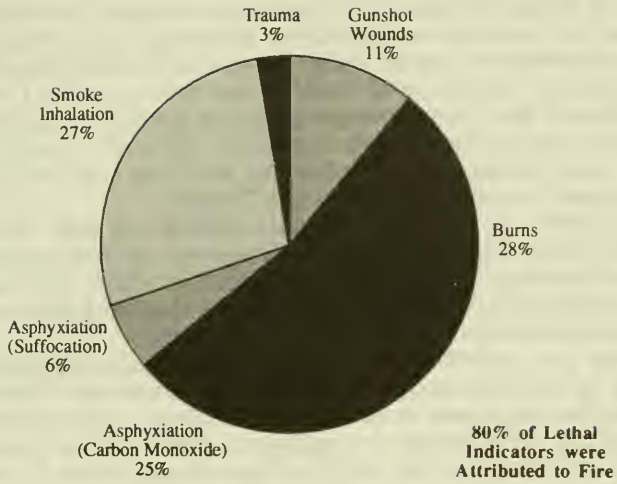


Figure 9. Causes of Death and Contributing Factors Among Branch Davidians on April 19, 1993.

The CHAIRMAN. Let me just thank all of our witnesses and the public at large for their close attention during these hearings. In conclusion, I want to reiterate the message that I began with yesterday. Throughout my years of service in Washington, I have been a very strong supporter of Federal law enforcement. I have the utmost respect for both agencies and the individual agents who put their lives on the line every day for us. It is the quality and heroism of these people that guarantees that, as a whole, Federal law enforcement is a success across the Nation.

As a result, none of us should overlook the fact that for every Waco or Ruby Ridge, there are thousands of safe, successful, and uneventful law enforcement actions carried out each year. It is because of my interest in and respect for law enforcement, though, that these hearings have become necessary.

During the past 3 years, I have become particularly aware of a number of growing problems in law enforcement. These problems include the increased militarization of law enforcement agencies, the inability of agencies to gather and assimilate gathered intelligence and act on it, the public's loss of confidence in law enforcement, the lack of organization between negotiations and tactical wings of law enforcement, and the reckless and overly aggressive attacks of field commanders. Both in Ruby Ridge and Waco, law enforcement actions failed as a direct result of these problems, and I therefore decided to convene these hearings with the intention of correcting these problems.

I am encouraged by the progress we have made during the past few days. We have learned that ATF and FBI have recognized the problems that exist in law enforcement. We have also learned of the various steps that both ATF and FBI are taking to correct the errors that occurred at both Ruby Ridge and Waco. Some of these steps include the placement of a greater emphasis on negotiations, the creation of the Critical Incident Response Group, the CIRG, and the development of better lines of communication between the various law enforcement teams.

Unfortunately, not all of the problems discussed have been addressed. More needs to be done to bolster the role of behavioralists and negotiations generally in barricade and hostage situations. We need to have greater data processing and computerization in our behavioral group of people down there at Quantico. That costs money, and it is Congress' fault that we are not putting enough money into these matters so that we are more skilled and better than we currently are.

But more needs to be done to rid law enforcement of its current militaristic mentality. We have got to bolster the role of behavioralists and negotiations generally, especially in these barricade and hostage situations.

Finally, more needs to be done to restore the confidence of the American people in law enforcement. This last issue becomes especially poignant in light of the tragedy at Oklahoma City. If law enforcement can work to accomplish these goals, my aims in convening these hearings and those of the other members of this committee, of course, are realized. If law enforcement fails, our Nation is going to suffer.

One thing is certain: In the future, this committee is going to redouble its efforts in diligently overseeing the use of force by law enforcement agencies. Misuses of power by law enforcement will be carefully investigated. As long as I am chairman of this committee, I will see to it that law enforcement in this country is held to the highest standards. I don't think you gentlemen mind that. I think you want to be held to the highest standards because that is what has always characterized the FBI and ATF through the years.

So, in summary, I believe that the best way to restore the public's confidence in law enforcement is for us to put Waco and Ruby Ridge behind us. Law enforcement has to move away from paramilitary operations and recommit itself to high-quality crime prevention. Additionally, I look forward to hearing from the administration as to how they further intend to ensure that tragedies like those at Ruby Ridge and Waco are never repeated.

Finally, again I want to say that our law enforcement agencies are working on a set of myriad problems all over this country. We know that we are engulfed with drugs in this country right now. We know that they are coming primarily from outside of our country, and yet now they are starting to come—well, we have always had some come from within the country. We know that we almost don't have a handle on it. We know that we have to do something about that. And I want to back our law enforcement agencies in doing that, and in the future, I believe we are going to hold some very significant hearings on precisely these areas of law where organized crime and those who are pushing drugs in our society are going to be brought to account, and we are going to count on our law enforcement agencies to help us to do that.

So I want to thank all of you for your cooperation. I want to thank you, Mr. Esposito, Mr. Montgomery, and Mr. Noesner, for being here and for the work that you are doing. And I want to thank the Director of the FBI because I don't know when we have had a better Director. I have admired each and every one that I have worked with since I have been here, and I have worked extensively and closely with each one. But I don't know of any who has taken it more seriously or done a better job or is listening more or trying to do what is right than Director Freeh. And I just want to personally thank him for the efforts that he is making on our behalf.

In that regard, I have to say that John Magaw really is taking up the cudgel there at ATF and I think trying to do a very good job in an agency that has been vastly criticized through the years by all of us. And I think they are doing a better job over there now.

But we want the FBI to be the premier and we think it is the premier law enforcement agency in the world. We don't think there is any question about. Are you perfect? No. But, by gosh, you are handling literally hundreds of thousands of problem every year. You are doing it without the moneys, without the back-up that you need to have. I know that the Director has had to take whatever few moneys he has to try and keep personnel instead of buying the best equipment, the best facilities, the best ability to be able to do all the things that need to be done. And that puts pressure on the FBI in these types of situations as well.

So we in Congress have got to get wise, and we have got to do some things that are right, too. We have got to back you and help you. I just want to tell the American people we are going to watch what you do; we are going to make sure that these incidents don't happen again; but we are also going to back you in true, legitimate law enforcement activities that have been the hallmark of the FBI through all these years.

I am proud of the FBI, and I am proud of ATF, the changes that have been made, and we look forward to working together in the future.

I have to vote, and I have just enough time to get there, so I will end with that. I want to thank everybody involved in the participation in this set of hearings. Thanks so much.

[Whereupon, at 1:16 p.m., the committee was adjourned.]

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ISBN 0-16-054375-4

9 780160 543753 90000



A standard 1D barcode representing the ISBN 0-16-054375-4. The barcode is composed of vertical black bars of varying widths on a white background. The numbers 9, 780160, 543753, and 90000 are printed below the respective segments of the barcode.